

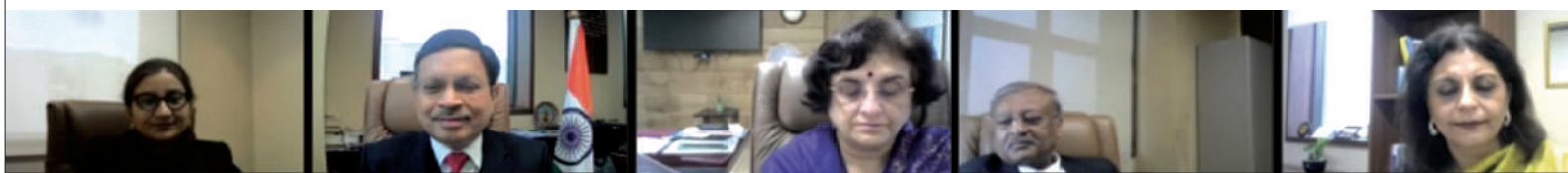


The Quarterly Newsletter of Competition Commission of India (CCI)

Fair Play

Volume 40: January–March 2022

IN FOCUS
Workshop on
“Startup Ecosystem
and Competition”



Nandan Nilekani

Shri Nandan M. Nilekani delivering the keynote address during the Workshop on “Startup Ecosystem and Competition” organised by Competition Commission of India virtually on 04.02.2022.

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FROM THE DESK OF THE CHAIRPERSON



It gives me immense pleasure to share the recent developments in the arena of competition law through the 40th volume of Fair Play for the quarter January–March 2022.

The “In-Focus” article of this volume covers the workshop on startup ecosystem and competition, held virtually on 04.02.2022, which brought together different stakeholders for an exchange of views to create a better understanding of the startup ecosystem and competition. The workshop comprised three sessions, including the inaugural session, and received overwhelming response from stakeholders, including members of the industry, the legal fraternity, and academia.

In this quarter, CCI virtually hosted the 9th International Competition Network (ICN) Unilateral Conduct Working Group (UCWG) Workshop from 22–23.03.2022. The two-day workshop touched upon a wide array of issues concerning unilateral conduct in digital markets. CCI also organised the 7th edition of its annual National Conference on Economics of Competition Law 2022 on 04.03.2022. The conference endeavours to develop and sustain interest in the economics of competition law and create a critical mass of antitrust economists.

In this quarter, Commission undertook some important enforcement measures. A penalty was imposed on maritime transport companies for contravention of the relevant provisions of Section 3 of the Act. Commission also imposed a penalty on seven entities for bid rigging in a tender of State Bank of India. Further, Commission imposed a penalty on tyre manufacturers and their association for indulging in cartelisation. Additionally, Commission passed an order under Section 27 of the Act, holding NECC in violation of the relevant provisions of Section 3 of the Act.

Regarding abuse of dominance, Commission ordered an investigation into the alleged abuse of dominant position by Google in respect of its news services. In separate cases, Commission also ordered an investigation against the Chandigarh Housing Board and against Star India, including its subsidiaries and group companies Disney and Asianet Star.

This quarter also saw two major landmark judgements from the Hon'ble Supreme Court. It confirmed CCI's jurisdiction over lotteries business, and in another judgement, the Hon'ble Supreme Court declined to interfere with the Madras High Court judgement upholding Commission's order of investigation against domestic tyre manufacturers. In another significant judgement, the Hon'ble NCLAT upheld the order passed by Commission in which the information against ANI Technologies Pvt. Ltd. was closed under Section 26(6) of the Act.

On the Combinations front, CCI approved the acquisition of shareholding in Sterling and Wilson Renewable Energy by Reliance New Energy; the acquisition of shareholding in Air India Limited, Air India Express Limited, and Air India SATS Airport Services Private Limited by Talace Private Limited; the combination involving the acquisition of Jhabua Power Limited by NTPC Limited and Secured Financial Creditors; the acquisition by GlaxoSmithKline Consumer Healthcare Overseas Limited and GlaxoSmithKline Consumer Healthcare UK Trading Limited of shareholding in GlaxoSmithKline Asia Private Limited; and the acquisition of shares of Future Generali India Life Insurance Company by Generali Participations Netherlands N.V.

During this quarter, we continued to pursue our extensive advocacy outreach programme to engage stakeholders. Lectures and workshops on competition law were organised across various educational institutions and departments of various states under our State Resource Persons (SRP) Programme, which continues to gain strength. We also sponsored competition law moot courts in law schools across the country.

CCI has always believed in strengthening cooperation with international competition agencies. In the last quarter, apart from our officers attending international conferences and seminars, a Memorandum of Understanding was signed virtually between Competition Commission of India (CCI) and Competition Commission of Mauritius (CC) in the month of February. Commission has always been committed to promote a healthy competition culture in India through effective enforcement and participative advocacy. We look forward to continue this journey with zeal and enthusiasm.



Ashok Kumar Gupta



Workshop on Start-up Ecosystem and Competition

The Competition Commission of India (CCI), with the International Institute of Information Technology, Bangalore as its Knowledge Partner, virtually organised a workshop on Start up Ecosystem and Competition on 04.02.2022. Start-ups play a vital role in

views to create a better understanding of the start-up ecosystem and competition. The workshop comprised three sessions including the inaugural session and received overwhelming response from stakeholders including members of the industry, the legal

stakeholder ecosystem of sellers, consumers, advertisers, and application developers depends on large digital platforms for survival and growth. He added that the common thresholds and metrics that are used for assessing anti-competitive effects in traditional markets may not be appropriate when applied to digital platforms. He further pointed out that the characteristics of digital markets have led to the adoption of business models that do not generate sufficient turnover to trigger mandatory M&A notification under the asset/turnover thresholds set out under competition laws. However, he added, competition regimes have to strike a balance while deciding notification thresholds, so that excessive filings do not choke up the agency's resources and significant deals do not slip out of jurisdiction.



Shri Ashok Kumar Gupta, Chairperson, CCI addressing the Inaugural Session of Workshop on 'Start-up Ecosystem and Competition on 04.02.2022 held virtually.

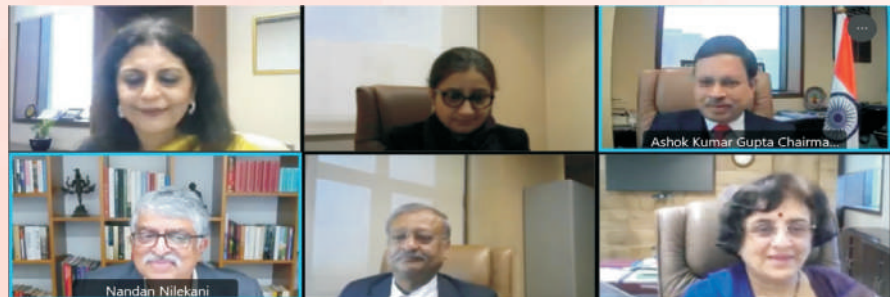
The common thresholds and metrics that are used for assessing anti-competitive effects in traditional markets may not be appropriate when applied to digital platforms.
Shri Ashok Kumar Gupta, Chairperson, CCI

Fraternity, and academia.

Addressing the inaugural session, Shri Ashok Kumar Gupta, Chairperson, CCI, discussed the evolution of Indian start-ups in various sectors of the economy and the need for their coexistence with multinational big tech firms. He mentioned that an entire multi

The keynote speaker of the workshop, Shri Nandan Nilekani, Chairman and co-founder, Infosys, and Founding Chairman, Unique Identification Authority of India (UIDAI), highlighted how the growing IT services sector has nurtured a massive technical talent

competitive markets, focusing on innovation. They provide dynamism to markets and offer newer ways to enhance consumer welfare. Against this backdrop, the workshop brought together different stakeholders for an exchange of



Shri Nandan Nilekani, Chairman and co-founder, Infosys and Founding Chairman, UIDAI delivering the keynote address during the Workshop on 'Start-up Ecosystem and Competition on 04.02.2022 held virtually

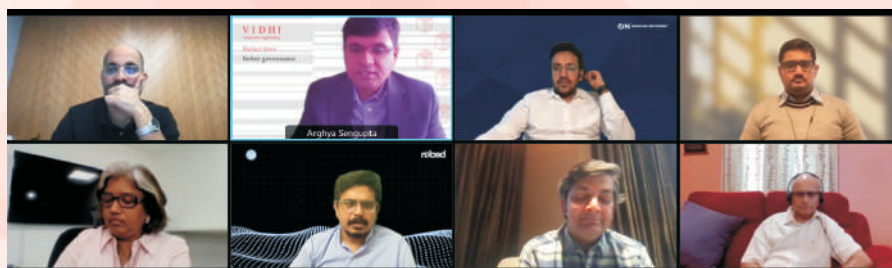
Apart from the legal and policy framework for appropriate governance of the massive digital ecosystem being developed by the country, the technology framework to facilitate competition, interoperability, and interchange of data is a necessity for building a sustainable digital future.

Shri Nandan Nilekani, Chairman and co-founder, Infosys, and Founding Chairman, UIDAI

pool in India, which is partly responsible for the growth of tech start-ups in the country. He highlighted the following three paradigm shifts that are occurring in the country: (i) the massive digital transformation across private, public, and government sectors spanning all sectors, fuelled by the COVID-19 pandemic; (ii) the adoption of digital public good in India, initiated by the digital ID, Aadhaar; and (iii) the rise of the Indian start-up ecosystem, which is third only to the U.S. and China in terms of valuation, revenue, and employment generation across industry verticals. He stressed that, apart from the legal and policy framework for appropriate governance of the massive digital ecosystem being developed by the country, the technology framework to facilitate competition, interoperability, and interchange of data is a necessity for building a sustainable digital future.

The session on “Big techs and Start-ups: Synergies and

Challenges” was moderated by Dr. Arghya Sengupta, Founder and Research Director, Vidhi Center for Legal Policy, with opening remarks by Prof. V. Sridhar, IIT Bangalore. The session brought together



Dr. Arghya Sengupta, Founder and Research Director, Vidhi Center for Legal Policy, moderating the session on “Big techs and Start-ups: Synergies and challenges”.

relevant stakeholders to discuss the role of big tech in start-up entry and growth, and emerging opportunities and challenges in the start-up big tech interface in India. The deliberations focused, *inter alia*, on issues surrounding interoperability and data portability. In the context of the growth and evolution of the start-up ecosystem in India, the panellists highlighted the importance of: (i) Ease of doing business: Easy to follow, stable, and unequivocal policy regime; (ii) Moving up of the value chain: Movement away from “me too” to innovative business models and technology-driven enterprises with unique value proposition; (iii) Interoperability and portability: New and adaptive legal and policy guidelines for both; (iv) Adoption: Need for creating a framework with

Enough supply and demand for the system to reach exponential adoption; and (v) Technological framework to enable competition in digital platforms.

The session on “Mergers and Acquisitions” was moderated by Shri Rohin Dharmakumar, Chief Executive Officer, The Ken.

Shri Shardul S. Shroff, Executive Chairman, Shardul Amarchand Mangaldas, made the opening remarks. The panellists in the session discussed emerging M&A trends in the start-up space in India, the key drivers of M&As, and the implications of M&As involving start-ups for competition and innovation. They further pointed out the benefits of M&As to smaller start-ups in terms of increased market access, economies of scale, and financial stability. Larger start-ups, on the other hand, gain access to the technology and skill sets of smaller, niche startups, enabling them to develop certain advantages



Shri Rohin Dharmakumar, Chief Executive Officer, The Ken, moderating the session on “Mergers and Acquisitions” along with other distinguished panellists.

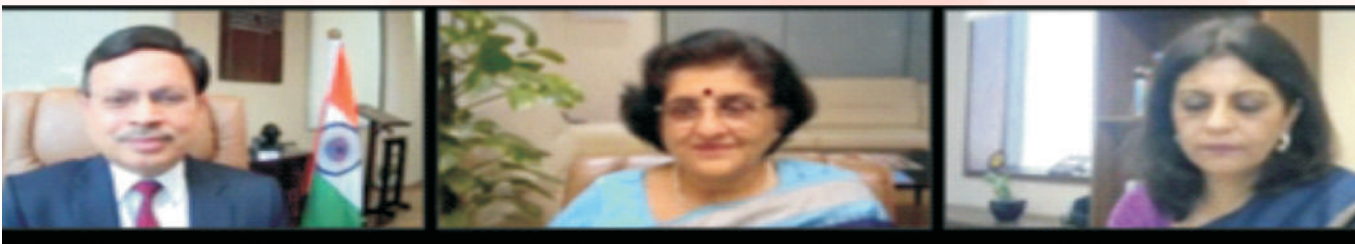
in the market. The need for competition regulators to watch out for “killer acquisitions” also came up in the discussion. The workshop was organised by CCI as part of its continuing efforts to engage with stakeholders and provided valuable

insights into the emerging trends, issues, and concerns pertaining to the start-up ecosystem in the country. The inputs from industry representatives and experts would help deepen the understanding of the opportunities and challenges

faced by start-ups in India and related issues relevant to competition and contestability.



7th National Conference on Economics of Competition Law



Shri Neelkanth Mishra Member, Economic Advisory Council to the Prime Minister (EAC-PM) delivering the Keynote Address at the National Conference on Economics of Competition Law held virtually on 04.03.2022.

The CCI organised the seventh edition of the National Conference on Economics of Competition Law on 04.03.2022 through the virtual mode. Shri Neelkanth Mishra, Member, Economic Advisory Council to the Prime Minister (EAC-PM), was the Keynote Speaker at the conference. Shri Ashok Kumar Gupta, Chairperson, CCI, delivered the Special Address at the Inaugural Session and Dr. Sangeeta Verma, Member, CCI, made the opening remarks.



Shri Ashok Kumar Gupta, Chairperson, CCI, delivering the Special Address during the Inaugural Session at the National Conference on Economics of Competition Law held virtually on 04.03.2022.

The Keynote Address by Shri Neelkanth Mishra focused on the emergence of technology giants and the challenges and novel questions it poses for regulation and regulators. Shri Neelkanth Mishra discussed key technological and economic factors such as network effects, scale economies, synergies between intangible assets within technology ecosystems, etc., that give rise to the concentration of market power in digital markets. Elucidating the features and metrics that are relevant in digital markets which distinguish them from traditional markets, he referred to the importance of investments in intangible assets such as brands, software, patents, etc., financing aspects such as the predominance of venture capital funds and private equity funding. While technology sectors, owing to their innate features, may be susceptible to winner-takes-all market structures, they also hold enormous potential to drive innovation, facilitate new business models, and help remove inefficiencies in the value chain. The question that merits attention in this context is whether the concentration of capital and market power and the



Dr. Sangeeta Verma, Member, CCI delivering the opening remarks during the Inaugural Session at the National Conference on Economics of Competition Law held virtually on 04.03.2022.

size and scale of technology giants by themselves can be seen as a threat to competition. He concluded by presenting a set of questions for regulators to ponder over so that the regulatory approach remains informed of the complexities of digital markets, entailing deep-rooted assessment, global collaboration, and cautious

reaction.

In his Special Address, Shri Ashok Kumar Gupta outlined the role of economics in unravelling the intricacies of markets and understanding the state of competition and what aids, abets, or hinders it. The architecture of the Competition Act, 2002, is such that

adjudication entails appreciation of the economics of markets and the impugned conduct. Referring to the growing emphasis placed by Commission on market studies, Shri Gupta mentioned that the application of this complex economic legislation could only be effective when it appropriately accounts for market specificities. Given the inherently dynamic nature of markets, especially new-age markets, Commission engages proactively with stakeholders through its market studies and stakeholder consultations. The learnings from these market studies allow Commission to appreciate various strategic market interactions in oligopolistic markets, and going forward, Commission proposes to undertake several market studies for the purpose of enforcement and advocacy.

In her opening remarks, Dr. Sangeeta Verma talked about the feedback loop between antitrust research and enforcement. She stressed on the need for the evolving academic discourse and the shifts in economic understanding to reflect in antitrust enforcement. On the other hand, a growing body of antitrust case laws with rigorous

economic analyses could stimulate follow-on research, she mentioned, for accurate yet speedy investigation and disposal of cases. It was important that parties, both in antitrust and combination matters, made their submissions and arguments with due regard to the economic framework that applies to the concerned industry.

Ms. Payal Malik, Adviser (Economics) and Head, Economics Division, extended the vote of thanks. While noting the Keynote speaker's contention that competition remains among few companies in certain digital markets, she pointed out that, in such a scenario, competition authorities' vigil assumes greater importance. Competition law will ensure that the digital hegemony of these large tech companies does not harm consumer welfare. The antitrust toolkit in India is well geared to take up these challenges.

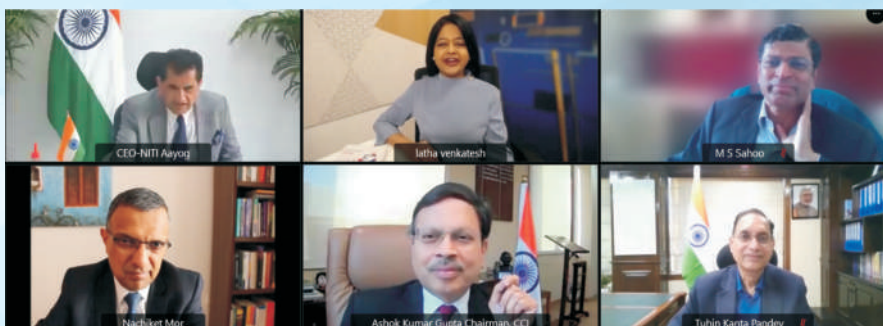
In addition to the Inaugural Session, the conference also included a **Plenary** and two **Technical Sessions** on **"Competition and Regulation: Empirical Inquiries"** and **"Competition Law and Policy:**

Issues and Approaches," where six selected papers on economics of competition law were presented.

Plenary: Reforms and Deepening of Markets

The Conference Plenary was on "Reforms and Deepening of Markets." Shri Amitabh Kant, Chief Executive Officer, NITI Aayog; Shri Tuhin Kanta Pandey, Secretary, Department of Investment and Public Asset Management, Ministry of Finance, Government of India; Dr. M. S. Sahoo, Distinguished Professor, National Law University, Delhi; and Dr. Nachiket Mor, Visiting Scientist, The Banyan Academy of Leadership in Mental Health and Senior Research Fellow, IIIT Bangalore, were the distinguished panellists at the Plenary. The Plenary was moderated by Ms. Latha Venkatesh, Executive Editor, CNBC Tv18.

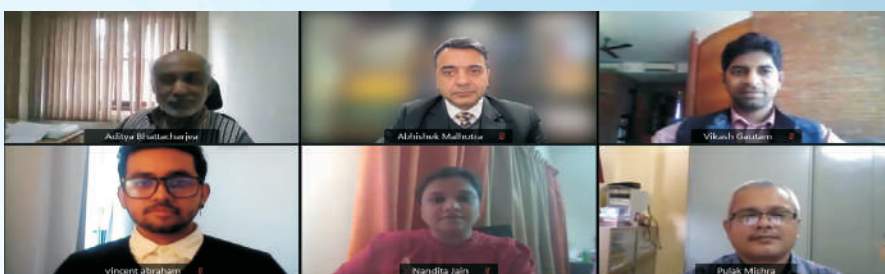
The Plenary brought forth a range of relevant issues. Shri Amitabh Kant spoke on asset monetisation that aims to unlock the value of investment in the public sector by tapping into private capital and efficiencies. He highlighted that asset monetisation embodies the idea of reforms and deepening of markets for public infrastructure. It aims to bring about a paradigm shift in the way infrastructure is created, operated, and funded in India. The policy of asset monetisation, he elaborated, is aimed at accelerating the cycle of private investment by providing commercially sustainable avenues in the form of brownfield core assets. These can simultaneously be supported through greenfield infrastructure creation by public sector and on



Ms. Latha Venkatesh, Executive Editor, CNBC TV18, moderating the Conference Plenary on "Reforms and Deepening of Markets" along with the distinguished panellists Shri Amitabh Kant, Chief Executive Officer, NITI Aayog; Shri Tuhin Kanta Pandey, Secretary, DIPAM, MoF, GoI; Dr. M. S. Sahoo, Distinguished Professor, NLU, Delhi; and Dr. Nachiket Mor, Visiting Scientist, BALM and senior Research Fellow, IIIT Bangalore at the National Conference on Economics of Competition Law held virtually on 04.03.2022.



Participants during Technical Session I on “Competition and Regulation: Empirical Inquiries” at the National Conference on Economics of Competition Law held virtually on 04.03.2022.



Participants during Technical Session II on “Competition Law and Policy: Issues and Approaches” at the National Conference on Economics of Competition Law held virtually on 04.03.2022.

public private partnership (PPP) mode. He stressed that the ultimate objective is to create a vibrantly competitive market in infrastructure sectors where both public and private sectors competitively collaborate to create world-class infrastructure for a multiplier effect on the economy.

Shri Tuhin Kanta Pandey spoke on the issue of strategic disinvestment and how it tries to harness private sector efficiencies into the public sector. He provided an overview of how the government’s disinvestment policy developed over time. He referred to the Centre’s new set of guidelines released in 2021 for the implementation of its public sector enterprise (PSE) policy, which is now the guiding policy for divestment and strategic disinvestment. The PSE policy, he averred, is predicated on the belief that when control is shifted to the private sector, it might encourage greater capital infusion, better management practices, and better technology in a world that is

dynamic and in an industry which is continuously evolving. The economic and employment potential of the enterprise and productivity potential of the economy is sought to be optimised through this policy of strategic disinvestment.

Dr. M.S. Sahoo spoke on the issue of reviving the productive assets of firms. He highlighted that the higher the intensity of competition and innovation, the higher the likelihood of failure of firms. A well-functioning market identifies failing firms and segregates them into two categories: i) failing but viable firms and ii) failing and unviable firms. The market tries to rescue firms in the former category and makes them performing and efficient again. At the same time, the market tries to push out firms in the latter category out of the market and release productive assets from such firms for use by more dynamic and efficient firms. In that sense, the market leverages only performing firms to be able to use its productive assets to the highest

possible extent. Inevitably, productivity is higher and growth is faster. But if the markets do not rescue productive firms or push out inefficient firms, such firms may grow in number over time, outnumber performing firms, and would have productive assets but no businesses. In this case, competition and innovation cannot drive growth, and thus, cannot deepen markets. He stressed that deep markets are required for inputs like capital, land, and labour, and for output, i.e., the goods and services produced. Further, deep markets are required for failing firms and businesses where productive assets are stuck.

Dr. Nachiket Mor spoke about financial sector regulation. In the context of a financial product such as health insurance, he pointed out that the world has moved on to managed care models in which insurers and health care providers are allowed to merge, which may appear anti-competitive, because one is forced to buy insurance only from the provider that owns the insurance company. However, it essentially changes the nature of competition from an incomplete product, where price is not a sufficient statistic, to a more complete product, where price is a sufficient statistic. Regulation, which has a bias for simplicity and a bias for price, is inconsistent with consumer welfare, according to him.

The conference was attended by approximately 230 attendees from various fields, including economists, academicians, scholars, government officials, lawyers, practitioners, competition agency officials and students etc.



From the Desk of the Chairperson of Forum Of Indian Regulators (FOIR)

-Shri Ashok Kumar Gupta

The Forum of Indian Regulators (FOIR) is a registered society under the Societies Registration Act, with the Registrar of Societies in the National Capital Territory of Delhi. The Forum owes its genesis to regulators' need to cut across sectors for a common platform to discuss emerging issues in regulatory procedures and practices, evolve common strategies to meet the challenges before regulators in India, and to share information and experiences.

The primary objective behind the formation of FOIR was "Promoting the growth of independent regulatory mechanisms and transparency in the working of the Regulatory Bodies."

Functions of FOIR:

- 1) To promote the growth of independent regulatory mechanisms.
- 2) To promote transparency in the working of the Regulatory Bodies.
- 3) To protect consumer interest and develop consumer advocacy organisations.
- 4) To develop human and institutional capacities in regulatory bodies, utilities, and other stakeholders.
- 5) To research the efficiency and effectiveness of independent regulation and matters incidental thereto.
- 6) To provide for an information

base on regulatory law and practice and regulatory economics.

- 7) To collaborate with academic and research institutions, professional bodies, and NGOs in India and internationally in areas of interest to the Society.
- 8) To do all such other lawful things as conducive or incidental to the attainment of the above aims and objects.

The Forum is led by the Governing Body and General Body. The Governing Body comprises the Chairpersons of Central Sector regulators, Chairpersons and Members of State Regulators (in accordance with the Rules), and the Hon'ble Secretary and Hon'ble Treasurer. The General Body comprises members of the Governing Body and serving and retired Chairpersons and Members of all SERCs, CERC, and other regulatory authorities. Currently, the Chairperson of FOIR is Shri Ashok Kumar Gupta, Chairperson, CCI.

With the Regulatory Commissions of different sectoral specialisations becoming Members of FOIR, the Forum has been enriched in terms of valuable multi-sectoral inputs on issues of common interest affecting the infrastructure regulations in such sectors.

As mentioned in the Rules & Regulations of FOIR, Regulatory Commissions or Authorities

established by law are admitted by the Governing Body as Institutional Members of the Forum. Presently, 35 regulatory bodies, including regulatory authorities such as the Airport Economic Regulatory Authority of India (AERA), Tariff Authority of Major Ports (TAMP), Competition Commission of India (CCI), Central Electricity Regulatory Commission (CERC), Telecom Regulatory Authority of India (TRAI), Petroleum and Natural Gas Regulatory Board (PNGRB), Insolvency and Bankruptcy Board of India (IBBI), and State Electricity Regulatory Commissions are Members of FOIR.

FOIR carried out studies on various subjects, *inter alia*, "Assessing Capacity Building Requirement for Regulatory Staff," "Models of Rural Electrification," and "Assessment of Cost of Service for supply to agricultural consumers and methods to reduce cross subsidy for agriculture category." In addition, FOIR, as a part of its Working Group activities, recently concluded its report on "Cross Sector Collaborative Regulation between Telecom Regulators and Electricity Regulators" for rolling out 5G network in the country using the transmission and distribution network of power utilities.

FOIR has discussed the availability of trained human resources in regulatory bodies and observed that urgent steps need to be taken

for capacity building. In this context, FOIR decided to establish the Regulatory Research and Training Institute (RRTI), which is aimed at providing research and training support and capacity building for the infrastructure regulatory bodies. The infrastructure and other facilities for RRTI are yet to be established. In the meantime, CERC, which is providing secretarial assistance to FOIR, has volunteered to provide space for operations of RRTI till the facilities are established by FOIR.

In order to further the activities of FOIR, sub-committee of FOIR recommended that FOIR execute an MOU with another institute, which can aid in conducting FOIR's activities. Accordingly, after exploring the same with Indian Institute of Corporate Affairs (IICA) and National Institute of Personnel Management (NIPM), FOIR signed an MOU on 11.10.2019 with the IICA for a period of 3 years, to be extended on mutual terms. Under this MOU, FOIR conducts capacity building programmes, studies, and webinars and publishes newsletters. The activities conducted during the past year includes Capacity Building Seminar for officers of FOIR member organisations at Goa, Colloquium for the Chairpersons and Members of the Central Sector Regulators, Conference for the General Body Members of FOIR at Udaipur, and a Seminar on "Insolvency issues that affect functioning of regulators and regulated entities" at New Delhi. To enable cross-border learning and exchange of ideas, the Forum also organised an international webinar series, engaging eminent speakers from regulatory bodies and inter-governmental organisations across

the globe. In order to conduct its programmes/activities, FOIR relies on the annual subscription fees paid by member organisations, which ranges from Rs. 2 lakhs to Rs. 4 lakhs per annum.

A few activities of FOIR:

1. Two-week Online Capacity Building Program for Regulatory Officials of FOIR Member Organisations
(13.09.2021–24.09.2021)



Two-week Online Capacity Building Program for Regulatory Officials of FOIR Member Organisations held on 13.09.2021–24.09.2021.

The Forum of Indian Regulators Centre at the IICA successfully conducted a Two-week Online Capacity Building Program for Regulatory Officials of FOIR Member Organisations between 13.09.2021 and 24.09.2021. The theme of the training programme was "Shaping the Future of Regulations in Emerging Digital Era." A total of thirty-six participants from different regulatory bodies such as TRAI, PNGRB, CERC, and other State Electricity Commissions attended the online capacity building programme. The programme focused on technological innovations and tools that can better the performance of participants.

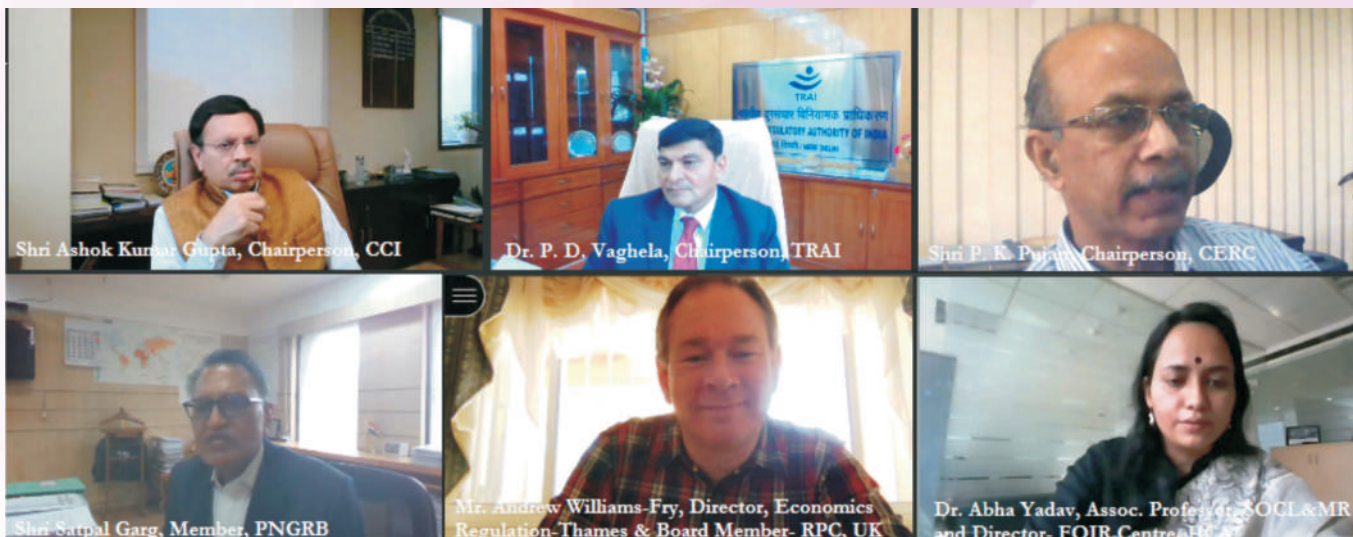
The pedagogy of the programme was based on online classroom

sessions, interactive discussions for experiential learning, and exercises based on case studies and problem-based questions in order to make the session engaging and to help those seeking answers to challenging questions and aspects on the theme.

2. Virtual colloquium for the serving Chairpersons of the Central Sector Regulatory Member Organisations of FOIR
(23.03.2021)

The Forum of Indian Regulators Centre at the IICA successfully organized a virtual colloquium for the serving Chairpersons of the Central Sector Regulatory Member Organisations of FOIR on the theme "Stakeholders Engagement in Regulatory Decision Making" on 23.03.2021 over Blackboard LMS. The session was held from 2:30 p.m. onwards. The programme provided a platform for the chairpersons to indulge in discourse on various aspects of stakeholders' engagement in regulatory decision making, challenges faced therein, and the way forward. The FOIR Centre duly acknowledged the coordination and support received from the FOIR Secretariat and CERC officials.

The panel in the colloquium



Virtual colloquium for the serving Chairpersons of the Central Sector Regulatory Member Organisations held on 23.03.2021.

comprised Shri P.K. Pujari, Chairperson, Central Electricity Regulatory Commission (CERC); Shri Ashok Kumar Gupta, Chairperson, CCI; Dr. P. Vaghela, Chairman, Telecom Regulatory Authority of India (TRAI); Shri T.S. Balasubramanian, Chairman In-Charge, Tariff Authority for Major Ports (TAMP); and Shri Satpal Garg, Member, Petroleum and Natural Gas Regulatory Body (PNGRB). FOIR in association with IICA had previously organised a colloquium in February 2020 on the theme “Ensuring Transparency and Accountability in Regulatory Framework.” In furtherance to the

previous theme, the current colloquium was designed to discuss and deliberate on “Stakeholder’s Engagement in Decision Making Process.”

3. Colloquium for the Chairpersons/Members of Central Sector Regulators of Forum of Indian Regulators (FOIR) (21.02.2020)

The Forum of Indian Regulators Centre at Indian Institute of Corporate Affairs successfully conducted the “Colloquium for the Chairpersons/Members of Central Sector Regulators of the FOIR” on

21.02.2020. The theme for the panel discussion was “Ensuring Transparency & Accountability in Regulatory Framework.” The panel comprised the Chairpersons/ Members of different regulatory bodies of IBBI, AERA and CERC.

The panellists were Shri P.K. Pujari, Chairperson, CERC; Dr. M.S.Sahoo, Chairperson, IBBI; and Shri Sudhir Raheja, Member, Airports Economic Regulatory Authority of India (AERA). The panel discussion was moderated by Shri Shantanu Dixit, Group Coordinator, Prayas Energy Group.



Colloquium for the Chairpersons/ Members of Central Sector Regulators of Forum of Indian Regulators held on 21.02.2020.



Competition Commission of India virtually hosted the 9th ICN UCWG Workshop

CCI hosted the 9th International Competition Network (ICN) Unilateral Conduct Working Group (UCWG) Workshop virtually during 22–23.03.2022. The workshop was attended by over 200 officers from various competition agencies and non-governmental advisors (NGAs).

Dr. Sanjay Kumar Pandey welcomed the delegates to the workshop on the opening day. Shri Ashok Kumar Gupta, Chairperson, CCI, delivered the opening remarks. He appreciated the ICN UCWG co-chairs – DG Comp, European Union (EU), Japan Fair Trade Commission (JFTC) Japan, and the French Competition Authority – for organising the workshop, and congratulated ICN for playing a pivotal role in stimulating deliberations on contemporary and pressing issues faced by ICN members. In his address, he underscored how technology and

disruptive innovations are continually altering the contours of markets, transforming ways of doing business, communications, and transactions, and raising new issues and concerns in competition policy discourse.

The two-day workshop touched upon a vast array of issues concerning unilateral conduct in digital markets. The plenary session deliberated upon some of the key issues pertaining to abusive unilateral conduct in such markets. The session was moderated by Mr. Mark Niefer, International Advisor, Antitrust Division, US Department of Justice. The panel of the session comprised Ms. Madalina Radulescu, Antitrust Case Handler Officer, DG Competition, European Commission; Ms. Eleanor Fox, Professor of Law, New York University School of Law, NGA



Dr. Sanjay Kumar Pandey, Adviser (Law), CCI, welcoming the delegates to the 9th ICN UCWG Workshop on 22.03.2022.

USA; Ms. Jyoti Jindgar Bhanot, Secretary (in-charge) and Adviser (Economics), CCI; and Dr. Alessandra Tonazzi, Director, International and EU Affairs, Italian Competition Authority. The discussion focused on the challenges faced by competition authorities while dealing with the novel business models and practices in digital market cases, given the ever-evolving nature of such markets. The session emphasised the need for dynamic approaches and novel tools to complement traditional enforcement mechanisms while also stressing upon the need to develop a symbiotic relationship between various competition authorities to bring out the best practices in dispensing their functions as regulatory bodies.

The second day of the workshop had three break-out sessions (BOS). Theme of BOS 1 was self-preferencing practices by dominant firms. As emerged from the session, self-preferencing has been one of the key areas of concern for



Shri Ashok Kumar Gupta, Chairperson CCI, delivering opening remarks at the 9th ICN UCWG Workshop held virtually on 22-23.03.2022.

antitrust enforcement in digital platform markets. The session was moderated by Mr. David Rodriguez, General Coordinator of Market Investigations, Mexican Federal Economic Competition Commission. The panel consisted of Ms. Morag

the law is broad enough to deal with this issue. The panellists also discussed the possible theories of harm that can be developed while dealing with self-preferencing allegations by digital platforms.

the panel comprised Mr. James Mancini, Competition Expert, OECD Competition Division; Mr. Marcus Vinicius Silveira de Sá, Coordinator of Merger and Antitrust, CADE, Brazil; Ms. Rachel Brandenburger, Visiting Research Fellow, Institute of European & Comparative Law, University of Oxford, NGA UK CMA; and Mr. Miguel Moura e Silva, Board Member, Portuguese Competition Authority (AdC). The panel focused their discussion on issues such as the acquisition of excess data than is legitimately warranted, data-related abuses and companies' use of data and their privacy commitments, issues related to data portability, use of competitively sensitive data, and possible remedies in data-related abuses.



The Plenary Session at 9th ICN UCWG Workshop was moderated by Mr. Mark Niefer. The panel consisted of Ms. Madalina Radulescu, Ms. Eleanor Fox, Ms. Jyoti Jindgar Bhanot and Dr. Alessandra Tonazzi.

BOS 3 contemplated over-

Bond, Joint General Manager, Digital Platforms Branch, Australian Competition & Consumer Commission; Shri Vinod Dhall, Senior Adviser, Touchstone Partners, NGA India; Ms. Sayanti Chakrabarti, Director (Economics), CCI; and Mr. Thomas Vinje, Partner, Brussels, Co-Chair, Global Antitrust Group, Clifford Chance LLP, NGA DG Competition, European Commission. The panel discussed the cases being dealt with in their respective jurisdictions concerning self-preferencing by some of the big tech players and also discussed the challenges faced by competition agencies in assessing the conduct of such players. There was a broad consensus that even if the existing legal framework does not specifically mention self-preferencing as a competition issue,



Break-out Session 1 at 9th ICN UCWG Workshop on “Self-preferencing practices by dominant firms” moderated by Mr. David Rodriguez. The panel consisted of Ms. Morag Bond, Shri Vinod Dhall, Ms. Sayanti Chakrabarti and Mr. Thomas Vinje.

The discussion in BOS 2 focused on data-related abuses, including obstacles to data portability and interoperability, refusal to give access to data, abusive use of third parties' data, etc. The session was moderated by Mr. Kelly Schoolmeester, Attorney, Technology Enforcement Division, US Federal Trade Commission and

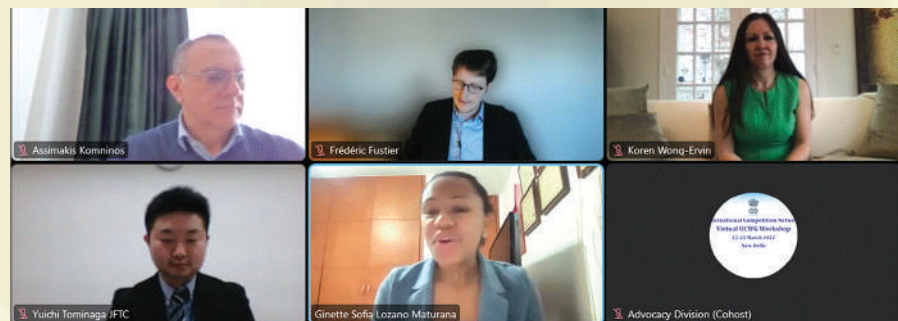
exploitative abuses and discriminatory treatment by digital market platforms across various jurisdictions. The session was moderated by Ms. Ginette Sofia Lozano Maturana, Chief Economist – Advisor, Superintendence of Industry and Commerce of Colombia. The panel comprised Dr. Assimakis Komninos, Partner,

White & Case LLP, NGA DG Competition, European Commission; Mr. Yuichi Tominaga, Senior Section Chief, Inter-Enterprise Trade Division, Japan Fair Trade Commission; Mr. Frédéric Fustier, Deputy to the Chief Economist, French Competition Authority; and Ms. Koren W. Wong-Ervin, Partner, Axinn, Veltrop & Harkrider LLP, NGA USA. The panel illustrated the exclusionary as well as exploitative conducts that have been examined by their respective authorities, along with case laws. They touched upon the importance of conducting effects-based analysis in conduct cases and requiring actual evidence of harm and other statutory provisions for the competitive assessment of cases.



Break-out Session 2 at 9th ICN UCWG Workshop on “Data related abuses in digital market cases” moderated by Mr. Kelly Schoolmeester. The panel consisted of Mr. James Mancini, Mr. Marcus V Silveira de Sá, Ms. Rachel Brandenburger and Mr. Miguel Moura e Silva.

Shri Kamal Sultanpuri, Deputy Director (Law), CCI summarised the two-day proceedings, and the workshop concluded with an update on the ongoing UCWG projects as apprised by Mr. Hiroyuki Kishimoto, Senior Planning Officer, International Affairs Division, Japan Fair Trade Commission.



Break-out Session 3 at 9th ICN UCWG on “Exploitative abuses & discriminatory treatment by digital market platforms” moderated by Ms. Ginette Sofia Lozano Maturana. The panel consisted of Dr. Assimakis Komninos, Mr. Yuichi Tominaga, Mr. Frédéric Fustier and Ms. Koren W. Wong-Ervin.

The workshop offered a platform for the exchange of views and enforcement experiences amongst

competition agencies and NGAs, enabling them to develop appropriate responses to deal with antitrust issues relating to abusive unilateral conduct in digital markets.

CCI also hosted the ICN Annual Conference in 2018 and the ICN Merger Workshop in 2014.



Shri Kamal Sultanpuri, Deputy Director (Law), CCI summarising the 9th ICN UCWG Workshop along with Mr. Hiroyuki Kishimoto, Senior Planning Officer, International Affairs Division, Japan Fair Trade Commission.



Music streaming services market: Trends and emerging competition issues

Introduction

The global music streaming services market (including music creators, songwriters, performing artists, music companies, recording and publishing companies, and streaming service providers, platforms and suppliers of commercial contents) is one of the fastest growing new-age economy markets. With the growth and penetration of the World Wide Web, the advancement of digital communication technologies, the increasing use of smartphones, and decreasing data costs, the music streaming services market has been experiencing an unprecedented surge in recent years across all its dimensions, such as popularity, number of service providers, subscription schemes, revenue and market size, etc. There is no doubt that the expansion of the sector has growth impetus, but the possible emergence of competition concerns cannot be ruled out. Recently, in January 2022, the Competition and Markets Authority (CMA) of the UK initiated a market study of music streaming markets to understand, *inter alia*, the adverse effects of the expansion of the market on the interest of consumers and the steps to be initiated to prevent any such adverse effects. This article attempts to examine the trends of the global and Indian music streaming services market and the emerging competition concerns.

Global trends

According to the report by Persistent Market Research on

“Global Music Streaming Market Revenue to be Fueled by Increasing Penetration of the Internet and Growing Adoption of Smartphones and Laptops,” the global music streaming market was valued at USD 6,423.6 million in 2017 and is projected to grow to USD 33,489.4 million by 2026. According to Statista, a leading market and consumer data provider, the revenue of the music streaming services market is expected to show a compound annual growth rate of 8.10% during the period between 2022 and 2026, and the number of users is expected to increase to 959 million by 2026. The USA, China, UK, Japan, and Germany are the leading revenue-generating countries in this sector, with a projected revenue of USD 9,818 million, USD 2,529 million, USD 1,821 million, USD 1,513 million, and USD 1,455 million respectively in 2022. The user penetration will be 9.4% in 2022, which is expected to reach 12.2% by 2026. The top music recording companies of the world are Universal Music Group, Sony Music, and Warner Music, and their respective market shares in 2020 were 32.1%, 20.6%, and 15.9%. In the same year, these three companies accounted for more than 68% of the global recorded music market. The top music streaming platforms are Spotify, Apple Music, Amazon Music, and Tencent Music, with market shares of 32%, 16%, 13%, and 13%, respectively. In the same

year, these 4 companies accounted for 74% of the market share of music streaming subscribers worldwide.

Trends in India

In tandem with global trends, the music streaming services market in India has grown rapidly in recent years. The Indian recorded music industry grew by 4.9% in 2020 and has been growing at an annual compound growth rate of 12.25% over the past five years. The revenue of India's recorded music industry increased to INR 1,332 crore in FY20. According to International Federation of the Phonographic Industry (IFPI), which represents the worldwide music recording industry, India is now ranked 17th in the world. As per Statista, the revenue from the music streaming market in India is projected to increase to USD 665 million in 2022. Top music companies operating in India include Saregama India Limited, Tips Industries Limited, Universal Music India, Times Music, T-Series Limited, Sony Music Entertainment India Pvt Limited, HMV, Blue Frog Productions, Music Today, Phat Phish, Natraj Music Company, JMD Tele films Industries, Super Cassettes Industry Limited, Eros Entertainment, and Venus Records and Tapes Manufacturing. There are also other music companies operating at the regional level in regional languages. As per Statista, Gaana, JioSaavn, Wynk Music, Spotify, and Apple Music are some

of the major music streaming platforms operating in India. Some major music apps operating in India are Gaana, JioSaavn, Wynk Music, Spotify, and Google Play Music; their respective market shares in 2020 were 30%, 24%, 13%, 15%, 10%, and 7%. India also has multiple national level music companies that create music and sell the same with their names on it. Other than these large-scale companies creating and selling music to platforms, there also exist regional labels (more than 22 regional languages) that are involved in the business of music creation. Streaming platforms in India also have tie-ups with independent music artists to create music and getting the same streamed on their platforms.

CMA market study and emerging competition issues

Based on the report by the Digital, Culture, Media and Sport (DCMS) Committee of the House of Commons, UK, “*Economics of Music Streaming*,” CMA initiated a market study of the music streaming services market in the UK. The said report examined the impact of music streaming on creators of music and music companies as well as the long-term sustainability of the music

industry. The report pointed out many issues across each layer of the value chain of the sector, which could have raised competition concerns in markets. Some such issues include the issue of stifling of innovation due to ties between music companies and streaming platforms, unfair remuneration to the creators of music such as song writers and artists due to complex and confusing licensing and royalty chains systems, the dominance of large music group companies in each layer of value chain in the industry, large companies leveraging other aspects of their business or using vertical integration to gain competitive advantage, etc. The three major music companies, i.e., Universal, Sony, and Warner, comprised 75% of the UK’s recording market (with Universal claiming 32%, Sony claiming 20%, and Warner claiming 16%) and had close ties with streaming platforms, prompting them to question competition in the market. The CMA study intended to cover the entire value chain of the music services market, i.e., from the creators to end users, i.e., competition between music companies, competition between music streaming services, and competition issues that may arise

from agreements and relationships between music companies and music streaming services.

Conclusion

The music streaming services market is on the rise across all its dimensions globally as well as in India. As pointed out in the “*Economics of Music Streaming*” report by the DCMS Committee, there may be competition issues in this sector, as in any new-age economy market. By initiating the market study, CMA has started observing the happenings in this sector from a competition lens. Given the market constructs in the sector in the UK, it will be interesting to observe whether the findings of this study highlight concerns that require the initiation of antitrust proceedings by CMA. Compared to the UK and the global market, the music streaming services sector in India appears to be in a nascent stage, being smaller and fragmented. However, considering the large user base in India, this sector has the potential to grow rapidly in the future.



CARTELS

CCI imposed penalty on maritime transport companies for indulging in cartelisation. (Suo Motu Case No. 10 of 2014)

Commission passed a final order against four maritime transport companies, namely, Nippon Yusen Kabushiki Kaisha ('NYK Line'), Kawasaki Kisen Kaisha Ltd. ('K-Line'), Mitsui O.S.K. Lines Ltd. (MOL), and Nissan Motor Car Carrier Company (NMCC) for indulging in cartelisation in the provision of maritime motor vehicle transport services to automobile Original Equipment Manufacturers (OEMs) for various trade routes.

The case was initiated by the Commission *Suo Motu*, on the basis of an application dated 01.10.2014 filed by NYK Line. Subsequently, MOL and NMCC also filed lesser penalty applications before CCI. Upon perusal of the documents/evidence filed by NYK Line, the Commission noted that the parties were exchanging commercially sensitive information, including prices. Accordingly, the Director General (DG) was directed to cause an investigation under Section 26(1) of the Act, into the matter.

The DG collected various evidences and found that the parties had agreements/arrangements/tacit understanding with each other utilising various *modus operandi* and thereby, forming respective cartels, which had the effect of limiting competition in India.

The Commission, on the basis of material available on record, found that there was an agreement between NYK Line, K-Line, MOL,

and NMCC with the objective of enforcement of the "Respect Rule", which implied avoiding competition with each other and protecting the business of the incumbent carrier with the respective OEM. The Commission also noted that, to achieve the said objective, the maritime transport companies resorted to multilateral as well as bilateral contacts/meetings/e-mails with each other to share commercially sensitive information, which included freight rates. The parties engaged in such practices with the aim of restricting competition and maintaining the status quo, i.e., ensuring that the car carriers retain their respective businesses for certain customers and/or certain routes. They also aimed to preserve their position in the market and maintain or increase prices, including by resisting requests for price reduction from certain OEMs. It was also noted that the contacts between the parties were route- or customer-specific, and not all parties were involved in every exchange.

Further, the conduct was noted to be an ongoing process and did not consist of isolated or intermittent occurrences.

Accordingly, based on a cumulative assessment of the evidence, the Commission held all four opposite parties, i.e., NYK Line, K-Line, MOL, and NMCC, guilty of contravention of the provisions of Section 3 of the Act, which prohibits

anti-competitive agreements, including cartels, from 2009 to 2012. Further, 14 individuals of NYK Line, 10 individuals of K-Line, 6 individuals of MOL, and 3 individuals of NMCC were held liable for the anti-competitive conduct of their respective companies in terms of the provisions of Section 48 of the Act.

The Commission imposed a penalty at 5% of the relevant turnover for each year of continuance of cartel on all parties and their respective individuals. As three companies had filed lesser penalty applications, the Commission gave the benefit of reduction in penalty by 100% to NYK Line and its individuals, 50% to MOL and its individuals, and 30% to NMCC and its individuals. Accordingly, the Commission directed K-Line, MOL, and NMCC to pay penalties to the tune of approximately INR 24.23 crores, INR 10.12 crores, and INR 28.69 crores, respectively, besides passing a cease-and-desist order.



CCI imposed penalty on seven entities for bid rigging in the tender of State Bank of India. (Suo Motu 02 of 2020)

The case was taken up by CCI *Suo Motu* under Section 19(1) of the Act, upon a complaint received in Commission, alleging bid rigging and cartelisation in a tender floated by SBI Infra Management Solutions Pvt. Ltd. (SBIIMS) for the supply and installation of new signages/replacement of existing signages for branches/offices/ATMs of SBI located at specified metro centres of various circles of SBI across India. It was alleged in the complaint that the tender floated by SBIIMS was rigged at a pan-India level and the bidders colluded amongst themselves by offering similar prices.

Commission formed a *prima facie* view that a case of contravention of the provisions of Section 3(1) read with Section 3(3) of the Act is made out with respect to the impugned tender on finding that certain bidders were coordinating and fixing the prices of their services as well as allocating the market amongst themselves, with the object of distorting fair bidding process. Accordingly, the matter was referred to the DG for investigation. The DG submitted the report, and, based on the documentary evidence collected

during investigation, the DG concluded that the parties had indulged in anti-competitive agreement/conduct and concerted practices to rig the impugned tender issued, as well as geographically allocated amongst themselves the circles for which the tender was issued. The DG also identified certain individuals of the OPs to be liable in terms of Section 48 of the Act.

Commission perused the Investigation Report, suggestions/objections, and arguments thereto filed by the parties and other material available on record, including the lesser penalty application filed by one party. Commission noted that there were two email communications exchanged between the parties in relation to the impugned tender. The emails contained worksheets showing a summary of the agreement between the parties in relation to the bidding process and an 'Auction Sequence' for each of the circles. Commission, based on a holistic assessment of the evidence, i.e., the documentary, the reply/submissions, and statements, opined that the parties had entered

into an agreement resulting in geographic market allocation as well as bid rigging in the impugned tender and therefore, violated Section 3(3)(c) and 3(3)(d) read with Section 3(1) of the Act.

Accordingly, all seven parties were held to be guilty of contravention of the provisions of Section 3 of the Act. Further, nine individuals of these parties were held liable for the anti-competitive conduct of their respective entities in terms of the provisions of Section 48 of the Act. Considering that most of the parties were MSMEs, CCI decided to impose penalties upon the parties and their individuals @1% of their respective average turnover and average incomes, respectively. Further, CCI granted a reduction in penalty by 90% to the leniency applicant and its individuals. Apart from the above, CCI directed the parties and their respective individuals to cease and desist from indulging in anti-competitive conduct in the future.

CCI imposed penalty on tyre manufacturers and their association for indulging in cartelisation. [Reference Case No. 08 of 2013]

CCI passed a final order dated 31.08.2018 against five tyre companies, namely, Apollo Tyres Ltd., MRF Ltd., CEAT Ltd., JK Tyre and Industries Ltd., and Birla Tyres Ltd., and their association, Automotive Tyre Manufacturers Association (ATMA), for indulging in cartelisation by acting in concert to

increase the prices of cross ply/bias tyre variants sold by each of them in the replacement market and to limit and control production and supply in the said market, thereby contravening the provisions of Section 3(3)(a) and 3(3)(b) read with Section 3(1) of the Act. The aforesaid order of Commission was

kept in a sealed cover as per the directions of the Hon'ble Madras High Court based on a writ petition filed by MRF Ltd., which was dismissed by the Madras High Court *vide* order dated 06.01.2022. Aggrieved by the same, the tyre companies filed SLPs before the Hon'ble Supreme Court, which

were also dismissed by the Hon'ble Supreme Court on 28.01.2022.

The instant matter was initiated on the basis of a reference received from the Ministry of Corporate Affairs (MCA) under Section 19(1)(b) of the Act alleging that tyre companies mentioned above and their association have violated the provisions of Section 3 of the Act.

On 24.06.2014, Commission *prima facie* observed that the act of not passing on the benefit of reduction in prices of major raw materials/inputs by the parties to the tyre consumers indicated lack of competition amongst them and some sort of understanding between them, especially in the replacement market, and accordingly, directed the DG to cause an investigation into the matter. The DG in its investigation found indulgence in cartel activity by the parties, and therefore, concluded contravention of the provisions of Section 3 of the Act.

On the basis of material available on record, Commission noted that the tyre manufactures had exchanged price-sensitive data amongst them through the platform of ATMA and had taken collective decisions on the prices of tyres. Commission also found that ATMA collected and compiled information relating to company-wise and segment-wise data (both monthly and cumulative) on production, domestic sales, and export of tyres on a real-time basis. Thus, Commission noted that the sharing of such competitively and commercially sensitive information made coordination easier amongst tyre manufacturers. Accordingly, Commission held the five tyre manufacturers and ATMA guilty of contravention of the provisions of Section 3 of the Act during 2011–12.

Besides passing a cease-and-desist order, Commission imposed penalties of Rs. 425.53 crore on Apollo Tyres, Rs. 622.09 crore on MRF Ltd., Rs. 252.16 crore on

CEAT Ltd., Rs. 309.95 crore on JK Tyre, and Rs.178.33 crore on Birla Tyres, calculated at the rate of 5% of average turnover for the three preceding financial years. In addition, a penalty of Rs. 0.084 crore was imposed on ATMA. ATMA was also directed to disengage and disassociate itself from collecting wholesale and retail prices through member tyre companies or otherwise. Further, certain individuals of the aforesaid tyre companies and ATMA were held liable for the anti-competitive conduct of their respective companies/association in terms of the provisions of Section 48 of the Act, and Commission imposed a penalty on them at the rate of 5% of average of their respective income for the three preceding financial years.

T. R. Chandran vs. National Egg Co-ordination Committee. (Case No. 09/2017) and, People for Animals vs. National Egg Co-ordination Committee & Another. (Case No. 36/2017)

Facts and allegations

Two separate Informations in Case Nos. 09/2017 and 36/2017 were filed by Shri T.R. Chandran and People for Animals ('Informants') against the National Egg Co-ordination Committee (NECC) and Agro Corpex India Limited (ACIL), which were clubbed by the Commission based on substantial similarity of issues and allegations involved. It was, *inter alia*, alleged by the Informants that NECC and ACIL indulged in determining,

declaring, and implementation of egg prices, which were in contravention of Section 3(3)(a) of the Act.

The Commission, after carefully considering the information and material placed on record, was *prima facie* satisfied that there existed a case of contravention of Section 3(3)(a) read with Section 3(1) of the Act and, accordingly, directed the DG to cause an investigation into the matter.

Findings of the DG investigation

The DG found that NECC is an association of poultry farmers consisting of three-tier committees, *viz.*, the Central Committee/ Executive Committee at the apex level, Zonal Committees at the middle level, and Local Committees at the bottom level, and was publishing egg prices on its official website on a daily basis. The DG investigation found that egg prices were declared through inter-zonal co-ordination, which took place *via*

WhatsApp groups and weekly tele conferences. The DG also found that the stock and supply situation at different zones was monitored via different platforms of NECC to maintain a certain price, and this declared price was implemented through certain practices, such as the imposition of penalties on poultry farmers. Thus, the DG concluded that the practice of determination and declaration of egg prices and the implementation of these declared prices amounted to contravention of Section 3(3)(a) of the Act.

Further, the DG noted that NECC was engaged in limiting and controlling the production and supply of eggs through practices including early culling of layer birds,

storage of eggs in cold stores, and restricting inter-zonal supply of eggs, which amounted to contravention of Section 3(3)(b) of the Act.

Findings of the Commission

The Commission, after considering the DG investigation report and submissions of the parties, observed that declaration and dissemination of daily egg prices by NECC was not anti-competitive *per se*. However, the act of NECC in trying to enforce such egg prices mandatorily by levying penalties/threatening to levy penalties on farmers was not in consonance with the provision of Section 3(3)(a) of the Act.

The Commission, thus, passed an

order dated 14.01.2022, under Section 27 of the Act, holding NECC in violation of the provisions of Section 3(3)(a) read with Section 3(1) of the Act and directed NECC to cease and desist, *inter alia*, from issuing any directives/threats that non-adherence to the declared egg prices shall have any penal/other (non-monetary) consequences upon any of its members.

NECC was further directed to file a compliance report of the above within 60 days from receipt of the order by NECC. The Commission also directed NECC to foster a culture of competition compliance within its organisation and to sensitise its employees by bringing into place a competition advocacy/compliance programme.



ABUSE OF DOMINANT POSITION

CCI orders investigation into abuse of dominant position by Google in respect of its news services. (Case No. 41 of 2021)

The Information in the instant matter was filed by the Digital News Publishers Association ('Informant') against Alphabet Inc., Google LLC, Google India Private Limited, and Google Ireland Limited (collectively referred to as 'Google') alleging violation of Section 4 of the Act.

The allegations of the Informant related to the specific conduct of Google which allegedly results in the denial of fair share in digital advertising revenue to news publishers and the disclosure of inadequate information to reach a fair settlement. According to the Informant, two-thirds of the revenue

of news publishers is accounted for by advertising, and with the digitalisation of the economy, the dependence of news publishers on digital advertising has increased. In this regard, it was claimed that the prominent source of traffic to news publishers' websites is online search engines (more than 50%), and the same was stated to be indicative of the dependence of news publishers on Google's search engines for a majority of the traffic.

The Commission noted that Google is *prima facie* dominant in the markets for online general web

search services as well as the market for online search advertising services. The Commission also noted that news publishers appear to be dependent on Google for the majority of their traffic, which makes Google an indispensable trading partner for news publishers. Further, the Commission observed that, based on available information, it can be reasonably inferred that Google occupies a significant position in the market for online digital advertising intermediation services.

The Commission noted that, considering Google's market

position, the alleged unilateral and non-transparent determination and sharing of ad revenues appears to be an imposition of unfair condition on publishers. The Informant also alleged that Google has unilaterally decided not to pay news publishers for the *snippets* used by them in search engine results. In this regard, the Commission, *inter alia*, observed that it needs to be examined whether the use of *snippets* by Google is a result of bargaining power imbalance between Google on the one hand and news publishers on the other, and whether it affects the referral

traffic to news publisher websites, and thus, their monetisation abilities. The Commission also noted that it further needs to be examined whether Google imposes any discriminatory conditions or prices on various news publishers. It also appeared that Google is using its dominant position in the relevant markets to enter/protect its position in the market for news aggregation services.

The Commission opined that Google, being the gateway, generates substantial traffic for news publishers, but at the same

time, the bargaining power imbalance and denial of fair share in the advertising revenue, as alleged by the Informant, merit detailed investigation.

Accordingly, the Commission was of the *prima facie* view that Google has violated provisions of Sections 4(2)(a), 4(2)(b), 4(2)(c), and 4(2)(e) of the Act and accordingly, directed the DG to cause an investigation into the matter under the provisions of Section 26(1) of the Act and submit a report thereon.

Shri Ramesh Kumar vs. Chandigarh Housing Board. (Case No. 39 of 2021)

An Information was filed by Shri Ramesh Kumar under Section 19(1)(a) of the Act against the Chandigarh Housing Board (CHB) alleging contravention of the provisions of Section 4 of the Act.

It was alleged, *inter alia*, that the Housing Scheme offered by CHB contains clauses that are unfair, exploitative, and in contravention of the provisions of Section 4 of the Act. Some of these include: interest @12% p.a. during the construction period and additional penalties in case of delay in payment of instalments @18% p.a. for the first month, @21% p.a. for the second month, and @24% p.a. for the third month. However, there was no provision to pay corresponding interest to allottees for delay on part of CHB in the allotment of flats. It

was also alleged that CHB did not specify the schedule for completion of construction or for handing over possession of the flat.

The Commission was of the *prima facie* view that CHB enjoys a dominant position in the 'market for the provision of services for development and sale of residential flats in the Union Territory of Chandigarh.' On the issue of charging 12% interest, the Commission is of the view that the consumer has a choice to opt for the means he wishes to adopt, and thus, charging interest on instalments does not *prima facie* appear to be abusive and in violation of the Act. Further, on the issue of the imposition of penal interest in the event of delayed payment of instalments, the

Commission did not deem it appropriate to state that stipulations of interest and charging of the same is grossly unfair, warranting an investigation. The Commission opined that the non-disclosure of dates of possession and levy of interest for a delay of one day, in the *prima facie* view, is unfair *qua* the consumers and merits an investigation.

Considering the information filed and material available on record, the Commission *prima facie* found contravention of provisions of Section 4(1) read with Section 4(2) of the Act by the Chandigarh Housing Board and ordered an investigation by the DG under Section 26(1) of the Act.

CCI orders investigation against Star India, including its subsidiaries and group companies Disney and Asianet Star. [Case No. 9 of 2022. (Dated: 28.02.2022)]

The Information in this matter was filed by Asianet Digital Network (P) Ltd. (ADNPL) under Section 19(1)(a) of the Act against Star India (P) Ltd. (SIPL), Disney Broadcasting (India) Limited (Disney), and Asianet Star Communications Private Limited (Asianet Star), alleging, *inter alia*, contravention of the provisions of Section 4 of the Act.

The Informant is stated to be a Multi System Operator (MSO) engaged in the business of providing digital TV services, predominantly in Kerala. It also operates in Karnataka, Andhra Pradesh, Telangana, and Odisha. SIPL, being part of the Disney group and its group companies, is present across the entire value chain of the media industry, from content generation to Over the Top (OTT) platforms.

Commission, after considering the Information and other material

available on record, observed that the main thrust of the allegations is that, by offering additional discounts to select MSOs and the main competitor of ADNPL in Kerala, viz., Kerala Communicators Cable Limited, SIPL has placed MSOs like ADNPL at a huge disadvantage, which is detrimental to competition and competitors in the market and results in distortion of the level playing field in the marketplace while also hindering the ability of the players to compete in an effective manner.

Commission, after taking into account the nature of the product and the relevant geographic market, noted that the relevant market *prima facie* appears to be the 'market for provision of broadcasting services in the State of Kerala.' Further, on the basis of market share, dependence of consumers, size and resources of the enterprise (being

part of a global media conglomerate), vertical integration of the enterprise, and countervailing power, the SIPL *prima facie* appeared to be enjoying a position of dominance in the relevant market. Commission also observed that the alleged discriminatory conduct of price discrimination (offering discriminatory discounts) between different MSOs of SIPL has resulted in significant loss in the consumer base of ADNPL, and therefore, it *prima facie* appears to be in violation of the provisions of Section 4(2)(a)(ii) of the Act as well as in contravention of the provisions of Section 4(2)(c) of the Act due to discriminatory pricing and denial of market access, respectively. Accordingly, *vide* its order dated 28.02.2022, Commission ordered an investigation into the matter by the DG under Section 26(1) of the Act and submit a report thereon.



MERGERS AND ACQUISITIONS

CCI approves acquisition of shareholding in Sterling and Wilson Renewable Energy by Reliance New Energy.

The Commission, *vide* its order dated 14.12.2021, approved the acquisition of 40% of share capital of Sterling and Wilson Renewable Energy Limited ('**Sterling and Wilson Solar**') by Reliance New Energy Solar Limited ('**Reliance Solar/Acquirer**'). The acquisition of shares is envisaged through preferential allotment of shares, purchases of shares from existing shareholder(s), and open offer, as per the Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulations, 2011. In the eventuality of full acceptance of the open offer, acquisition can go up to 51.07% of the share capital of Sterling and Wilson Solar.

Reliance Solar is a wholly owned subsidiary of Reliance Industries Limited (**RIL**), which is the ultimate holding company for entities belonging to the RIL group ('**RIL Group**'). Reliance Solar is a newly incorporated entity and does not

offer any products or services in India. Sterling and Wilson Solar is claimed to be a global pure-play, end-to-end solar engineering, procurement and construction (**EPC**) solutions provider in India as well as over 25 countries globally. It also provides operation and maintenance (**O&M**) services, including for projects constructed by third parties.

The activities of Reliance Solar (including through the RIL Group and its affiliates) and Sterling and Wilson Solar do not exhibit any horizontal overlaps. However, Reliance Solar recently announced the acquisition of stake in REC Solar, which is engaged in the supply of solar photovoltaic modules globally. There exists a potential vertical overlap between the business activities of REC Solar and Sterling and Wilson Solar. The market position of REC Solar and Sterling and Wilson Solar is not significant enough to raise

IN A NUTSHELL

Reliance Solar is acquiring stakes in Sterling and Wilson Solar - a company providing EPC and O&M services relating to solar power generation.

The combining entities are not present in the same market, and the market position of Reliance Solar, including REC Solar and the target, is not likely to raise foreclosure concerns.

foreclosure concerns. Further, the segments in which REC Solar and Sterling and Wilson Solar exhibit vertical interface are characterised by the presence of other players.

The Commission approved the combination under Section 31(1) of the Act, as it was not likely to have an appreciable adverse effect on competition in India.

CCI approves combination involving the acquisition of Jhabua Power Limited ('Jhabua Power'/'Target') by NTPC Limited (NTPC) and Secured Financial Creditors (SFCs) [comprising Axis Bank Limited, Bank of India, Life Insurance Corporation of India, Punjab National Bank, State Bank of India, UCO Bank, Union Bank of India, Power Finance Corporation Limited, and REC Limited].

On 29.12.2021, the Commission approved the acquisition of Jhabua Power by NTPC & SFCs (collectively referred to as

'Acquirers'). The Target is currently undergoing Corporate Insolvency Resolution Process in accordance with the Insolvency and Bankruptcy

Code, 2016.

NTPC is a listed public sector undertaking and its business activity

is power generation through coal-based thermal power plants, hydro, and renewable energy sources.

The SFCs are the Committee of Creditors, as constituted by the Resolution Professional appointed for the insolvency proceedings of the Target.

The Target is a private limited company based in the Seoni district of Madhya Pradesh and engaged in the business of power generation through coal-based thermal power stations.

The Combination involved the Target issuing: (i) 50% of its fresh equity shares and Non-Convertible Debentures to NTPC; and (ii) 50% of fresh equity shares and Non-Convertible Debentures to a trust

settled by the Target for the benefit of the SFCs.

The Commission noted that a horizontal overlap existed amongst NTPC and the Target with respect to the business of power generation at the broader level. Additionally, there were potential vertical relationships considering the business of power generation of the Target and the presence of: (i) SFCs in the business of deployment of credit for the industry; (ii) certain investee entities of some SFCs in the business of manufacturing transformers, conductors, and cables; and (iii) Power Finance Corporation Limited and REC Limited in the provision of consultancy services in the power sector. However, the overall presence of the Target based on its

IN A NUTSHELL

- Horizontal overlap amongst NTPC and Target with respect to the business of power generation at the broader level.
- Potential vertical relationships considering the business of the Target and the presence of SFCs.
- Presence of the Target as reflected in its existing market share or the bidding activity for power generation projects during the CIRP found to be insignificant.

existing market share and the increment in the existing market share or the incremental ability to win power generation projects resulting from the combination was found to be insignificant to cause any changes in the competition dynamics.

CCI approves acquisition of shareholding in Air India Limited, Air India Express Limited, and Air India SATS Airport Services Private Limited by Talace Private Limited.

On 20.12.2021, the Commission approved the acquisition of 100% equity share capital of Air India Limited ('**Air India**') and Air India Express Limited (**AIXL**) and 50% equity share capital of Air India SATS Airport Services Private Limited (**AISATS**) by Talace Private Limited ('**Talace**').

Talace is a wholly owned subsidiary of Tata Sons. Tata Sons is an investment holding company which is registered as a core investment company with the Reserve Bank of India (**RBI**) and classified as a "Systemically Important Non-Deposit Taking Core Investment Company."

Certain enterprises belonging to the

Tata Sons Group and Air India along with AIXL are active in provision of: (i) domestic passenger air transport services in India; (ii) international passenger air transport services in India; (iii) domestic air cargo transportation services in India; and (iv) international air cargo transportation services in India. AISATS is engaged in the business of providing ground handling services at the Delhi, Bengaluru, Hyderabad, Mangalore, and Thiruvananthapuram airports, as well as cargo handling services at the Bengaluru airport.

The Parties' activities also exhibit vertical and/or complementary overlap in the segments of ground handling services and provision of

IN A NUTSHELL

Talace, a wholly owned subsidiary of Tata Sons, acquired 100% shares of Air India, AIXL, and 50% shares of AISATS from the Government of India. The government-held airlines was accumulating debt for several years and was likely to discontinue operations without financial support from the government.

The Commission found that the likely benefits of the acquisition would substantially outweigh any likely harm to competition in a few routes in the international and domestic air transport sectors.

passenger air transport services; cargo handling services and provision of cargo air transport services; and provision of in-flight catering services to airlines and provision of passenger air transport services in India. There are certain complementary/potential overlaps between the Parties in terms of insurance, accommodation, communication, information technology, security, lounge, and air tickets to passengers of other airlines, but these are not such as to cause competition concerns.



The Combination involves the acquisition of a debt-laden firm held by the Government of India (GoI) by a private entity. Talace made an offer for acquisition through open and transparent bidding process. The acquisition is a culmination of GoI's two-decade-long endeavour to privatise Air India, which has continuously accumulated losses and required constant government support to remain afloat. Further, the government-owned airlines has been accumulating debt for several years and was likely to discontinue operations without financial support.

The Commission observed that market concentration may increase in certain Origin Destination (O&D)

pairs in domestic and international passenger travel services. However, there are mitigating factors in the form of market forces as well as factors specific to Air India. The market forces include supply side substitutability, existence of a strong competitor, availability of indirect flights, likelihood of expansion in capacity of airports, etc., while factors specific to Air India include the likelihood of improving operational efficiencies, addressing sub-optimal asset utilisation, optimising the route network, and the possibility of deriving efficiencies from synergies when the airlines is operated by a private entity, which is likely to discover the benefits of operating in

a competitive environment in a more efficient manner. The Commission also considered these mitigating factors in the overall context, as noted in the para above. Considering all the factors in unison, it appeared that the likely benefits substantially outweigh the likely harm to competition as a result of the combination.

The Commission approved the combination under Section 31(1) of the Act, as it was not likely to have an appreciable adverse effect on competition in India.

Commission approved acquisition of shares of Future Generali India Life Insurance Company by Generali Participations Netherlands N.V.

On 20.01.2022, CCI approved the acquisition of shares of Future Generali India Life Insurance Company (FGLIC/'Target') by Generali Participations Netherlands N.V. (GPN/'Acquirer'), pursuant to which, GPN's shareholding in FGLIC increased from 49% to approx. 71%. The combination

involved the acquisition of shares of FGLIC by GPN, an existing shareholder of FGLIC, through subscription to equity shares of FGLIC, to be issued by FGLIC through preferential allotment and purchase of all of Industrial Investment Trusts Limited's shareholding (IITL) of FGLIC.



GPN, an investment holding company, is a wholly owned subsidiary of Assicurazioni Generali S.p.A ('Generali Group'), the ultimate parent entity of the Generali Group of companies. In India, GPN is only active as an investment holding company, through which it holds shares (directly and indirectly) in joint ventures with Future Group, which is engaged in the provision of insurance services. GPN is engaged in the provision of life insurance services in India through FGLIC. FGLIC, a company incorporated in India, is a life insurance company registered with the Insurance Regulatory and Development Authority of India (IRDAI). FGLIC is a joint venture between three groups, viz., Generali Group, Future Group, and IITL.

The relevant market for horizontal overlap between the Parties has been defined as the 'market for provision of life insurance services in India.' With respect to vertical relationship, it was submitted that

FG&G Distribution Private Limited (FG&G), a joint venture between Generali Group and Future Group, is engaged in the distribution of insurance services/products in India. Therefore, the Target and FG&G have an existing vertical relationship, and the relevant market at the downstream level in relation to this vertical relationship has been defined as the 'market for the distribution of life insurance services in India.'

Commission noted that the combined market share of the Parties in the market for the provision of life insurance services in India was insignificant. Further, there were other players in the market, such as LIC, SBI Life Insurance, etc., who would continue to pose competitive constraints to the Parties. In relation to the vertical relationship, it was noted that the Target's market share in life insurance in India and FG&G's market share in the market for the distribution of life insurance services

IN A NUTSHELL

GPN, an existing shareholder, is increasing its shareholding from 49% to 71% in FGLIC, which is engaged in life insurance services in India. The market shares of the Parties are insignificant and face competitive constraints from other players present in their respective relevant markets. No AAEC.

in India were negligible to raise any competition foreclosure concerns in India. Further, there were various other channels for the distribution of insurance policies, such as banks, corporate agents, and brokers, as well as individual brokers and agents. Therefore, Commission approved the Combination under Section 31(1) of the Act.

Commission approves the acquisition by GlaxoSmithKline Consumer Healthcare Overseas Limited (GSKCHOL/'Acquirer') and GlaxoSmithKline Consumer Healthcare UK Trading Limited (GSKCHUKTL/'Acquirer') of shareholding in GlaxoSmithKline Asia Private Limited (GSKAPL/'Target').

On 20.01.2022, Commission approved the acquisition of the entire outstanding equity share capital of the Target by the Acquirers from GlaxoSmithKline Pte and Smithkline Beecham.

The Acquirers are wholly owned subsidiaries of GlaxoSmithKline Consumer Healthcare Holdings (No.2) Limited ('GSK CH HoldCo'). GSK CH HoldCo was established through contribution by

GlaxoSmithKline plc. (GSK) and Pfizer Inc. ('Pfizer') of their respective legacy consumer healthcare businesses and is owned 68% by GSK and 32% by Pfizer.

GSKAPL is involved in the marketing and distribution of over-the-counter (OTC) oral consumer healthcare products under various brand names such as Parodontax, Sensodyne (Foaming Fluoridated

Toothpastes), and Polident (Denture Adhesive) and OTC medicines, viz., Crocin (non-narcotic anti-pyretic product) and ENO brands (antacids and anti-flatulent products) ('GSKAPL Products').

The proposed combination consists of the following interconnected steps: (i) GSKAPL's acquisition of trademarks pertaining to 'Iodex' (topical anti-rheumatic products)

and 'Ostocalcium' (calcium preparation products) brands ('GSK Consumer Brands') in India from GlaxoSmithKline Pharmaceuticals Limited ('GSK Pharma'); and (ii) acquisition of 100% shares in GSKAPL by GSKCHOL and GSKCHUKTL. In terms of products/activities, the proposed combination involves the transfer of GSKAPL Products and GSK Consumer Brands to GSK CH Hold Co.

Commission considered the overlaps of each of the GSKAPL Products and GSK Consumer Brands with the retained business of Pfizer in India. There were horizontal overlaps in the areas/product segments of antacids and anti-flatulent products, topical anti-rheumatic products, and calcium preparation products, which were assessed further considering the IQVIA-IMS India Database,

which adopts the European Pharmaceutical Marketing Research Association's ('EphMRA') anatomical therapeutic chemical (ATC) classification of medicine at the ATC3 level and/or ATC4 level.

Commission noted that, for the product segment of antacids and anti-flatulents, GSK would be contributing ENO brands, while Pfizer has two retained products, viz., 'Gelusil MPS' and 'Mucaine.' In the segment of calcium preparation products, GSK would be contributing Ostocalcium brands while Pfizer has one retained product, viz., 'Ossivite.' In the segment of topical anti-rheumatics, GSK would be contributing Iodex brands while Pfizer has one retained product, viz., 'Dolonex.'

Considering, *inter alia*, the presence of the parties, the nature

IN A NUTSHELL

- Certain competing pharmaceutical brands of GSK are brought under the joint venture of GSK and Pfizer through the combination.
- Independent presence of Pfizer also being maintained in certain segments.
- No likelihood of AAEC considering the nature, extent of presence of parties, and presence of other competitors.

of the products, the extent of competition in the relevant market segment, Commission was of the opinion that the proposed combination was not likely to cause an appreciable adverse effect on competition in India.



JUDICIAL PRONOUNCEMENT

Supreme Court confirmed CCI to have jurisdiction over lotteries business: a regulated commodity, if there is an element of anti-competition involved.

The CCI directed an investigation against M/s N. V. International, Summit Online Trading Solutions Pvt. Ltd., M/s. Teesta Distributors, and E-Cool Gaming Solutions (P) Ltd. upon the allegation that they had cartelised and entered into bid rigging and a collusive bidding process, thereby violating Section 3(1) read with Section 3(3) of the Act and also caused grave financial loss to the State of Mizoram.

Three writ petitions were filed on the grounds, *inter alia*, that lotteries were not covered by the Act and, thus, CCI did not have the

jurisdiction to conduct an inquiry under Section 26(1) of the Act. The Guwahati High Court, while deciding the said three petitions, held that the lottery activity being in the nature of *res extra commercium* could not be covered by the Act, and consequently, CCI did not have jurisdiction to entertain the complaint against the same. Aggrieved by the said order, civil appeals were filed before the Hon'ble Supreme Court.

The Hon'ble Supreme Court, by way of judgement dated 19.01.2022 in the matter of CCI vs. *State of*

Mizoram & Ors., set aside the order passed by the Gauhati High Court and allowed CCI to proceed in accordance with law. The Hon'ble Supreme Court, while allowing the appeals preferred by CCI, held that there appeared to be a mis-application by the High Court of the interplay of the two Acts, i.e., the Competition Act, 2002 and the Lotteries (Regulation) Act, 1998 (the Regulation Act), and that CCI was not at all concerned with the carrying out, regulation or prohibition of the lottery business, as it was governed by the Regulation Act. Rather, the concern

was limited to the role assigned to CCI under the Competition Act, 2002, limited to examining any perceived bid rigging in the tendering process for the appointment of selling agents and distributors for the lottery business. There was no conflict in the interplay of the two Acts, and the limited scrutiny was to examine the mandate of Section 3(1) read with Section 3(3) of the Competition Act, 2002.

It was also held by the Hon'ble Court that the lotteries may be a regulated commodity and may even be *res extra commercium*. That would not take away the aspect of something that is anti-competitive in the context of business related to lotteries. The Court further observed that the definition of "service" under

Section 2(u) of the Competition Act, 2002 is an expansive one, and means "service of any description" made available to potential users. The purchaser of a lottery ticket is a potential user and a service is being made available by the selling agents in the context of the Competition Act, 2002.

Further, the Court held that the lottery business can continue to be regulated by the Regulation Act. However, if in the tendering process, there is an element of anti-competition which would require investigation by CCI, that cannot be prevented under the pretext of the lottery business being *res extra commercium*, more so when the State Government decides to deal in lotteries. Additionally, it was held that the

intervention by the High Court was extremely premature; it ought to have waited for CCI to come to a conclusion, but CCI proceedings have been brought to a standstill. The High Court ought not to proceed in the manner and direction in which it sought to proceed. It was also held that the process initiated from the filing of complaint onwards, i.e., inquiry by CCI, *prima facie* opinion and direction to investigate, the DG's adverse findings, and issuance of notice by CCI giving an opportunity to the affected parties to place their stand, ought to have been permitted to conclude with the rights available to the affected parties to avail of the appellate remedy under Section 53B of the Competition Act, 2002.

The Supreme Court declined to interfere with the Madras High Court judgement upholding the CCI order of investigation against domestic tyre manufacturers.

The CCI directed an investigation into alleged cartelisation by domestic tyre manufacturers (Apollo Tyres Ltd., MRF Ltd., CEAT Ltd., J. K. Tyres & Industries Ltd., and Birla Tyres). The said order of investigation was challenged by way of a writ petition filed by MRF Ltd., which was dismissed by Ld. Single Judge *vide* judgement dated 06.03.2018. Upon challenge, the Division Bench of Hon'ble Madras High Court dismissed the writ appeal filed against the judgement passed by Ld. Single Judge. The Division Bench, while dismissing the appeal, *inter alia*, held that a conjoint reading of Regulation 15(3), Regulation 15(5), Regulation 40 of Competition Commission of India

(General) Regulations, 2009, and Section 15(c) of the Act would indicate the legislative intent that the non-compliance of the regulations in each case shall not invalidate the proceedings initiated by the Commission. The Division Bench further held that the Ld. Single Judge was right to hold that the Writ Court cannot interfere with the preliminary order directing investigation on the grounds of procedural lapses, either in making the reference or entertaining the same, and that the order passed by the Commission under Section 26(1) of the Act is not amenable to writ jurisdiction as it does not affect the rights of the parties nor does it effectively

determine any right or obligation of the parties to the lis. The court also held that the principles of *res judicata* may not apply, as the Act permits CCI to initiate action on the complaint of cartelisation independently for each year. It was also held that the filing of a writ petition before the Delhi High Court by the Automotive Tyre Manufacturers' Association (ATMA) during the pendency of the appeal before this Division Bench, Madras High Court amounted to forum shopping, as a result of which, the order passed by Ld. Single Judge was upheld by the Division Bench of the Hon'ble Madras High Court through a detailed reasoned order. The Hon'ble Supreme Court, *vide*

judgement dated 28.01.2022 in the matter of *MRF Limited vs. Ministry of Corporate Affairs (MCA)*, dismissed the Special Leave Petitions filed against the judgement passed by the Division Bench of the Madras High Court. The Court, after noticing both i) the stage of the

proceedings, i.e., investigation already complete and report submitted to CCI, parties taking part in the proceedings before CCI, and the final order passed and kept in a sealed cover pursuant to the order of the Madras High Court; and ii) the facts and circumstances of the

case, declined to entertain the Special Leave Petitions filed, leaving all the rights and contentions of the parties open to be pursued in accordance with law.

NCLAT upheld the order passed by CCI.

The CCI closed an information under Section 26(6) of the Act against Ola, filed by taxi services providers Fast Track Call Cab and Meru Travel Solutions upon allegations that the discounts and incentives provided by Ola to its customers and drivers were in contravention of Sections 3 and 4 of the Act.

Aggrieved by the said decision of the Commission, the taxi services providers filed appeals before NCLAT, seeking it to set aside the impugned order of closure passed by the Commission and hold Ola guilty of violation of Sections 3 and 4 of the Act.

The Hon'ble NCLAT, *vide* its order

dated 07.01.2022 passed in the matter of *Meru Travels Solutions Pvt. Ltd vs. CCI & Ors.* and *Fast Track Call Cab Pvt. Ltd. vs. CCI & Ors.*, dismissed both appeals without interfering with the order passed by CCI. The Hon'ble NCLAT did not find the drivers' agreements anti-competitive in violation of Section 3 of the Act, as the said agreement is entirely optional, does not in any way bind the drivers to Ola's network, and provides them with the option to move should they want. Further, it was held that Ola was not enjoying a dominant position in the relevant market in violation of Section 4 of the Act as it was itself a new entrant in the market. It was observed that Ola employed a pricing strategy to

establish its brand and network to provide much more efficient and user-friendly services to customers in real time at any place and time to edge out competitors who were already present in the radio taxi market in Bengaluru, which cannot be faulted as predatory pricing. Therefore, since Ola did not have a dominant position, the question of abuse of dominant position through predatory pricing was also not attracted.



ADVOCACY INITIATIVES

1. Shri Ashok Kumar Gupta, Chairperson, CCI was the Chief Guest and delivered the Inaugural Address at the Competition Commission of India–Hidayatullah National Law University (CCI–HNLU) 12th Justice Hidayatullah Memorial National Moot Court Competition, organised by HNLU through the virtual mode on 18.02.2022.



2. Shri Mukul Sharma, Joint Director (Economics), delivered a lecture on competition law for trainee officers of the Indian Company Law Service (ICLS) during a two-day on-the-job training programme organised by ICLS through the virtual mode on 06.01.2022.
3. Shri Anand Vikas Mishra, Joint Director (Law), delivered a lecture on competition law for trainee officers of the ICLS during a two-day on-the-job training programme organised by ICLS through the virtual mode on 06.01.2022.
4. Shri Mukul Sharma, Joint Director (Economics), delivered a lecture on competition law for the students and faculty of the People's Education Society University (PES) University, Bangalore, through the virtual mode on 17.01.2022.
5. Shri Anuj Verma, Deputy Director (FA), delivered a lecture on competition law during the international conference on "Kaleidoscopic Vision of Competition Law: A Way Forward," organised by the Marathwada Mitra Mandal's Shankarrao Chavan Law College, Pune, in collaboration with the Department of Legal & Social Studies, University of Chieti-Pescara, Italy, through the hybrid mode on 24.01.2022.
6. A first induction lecture for the newly appointed State Resource Person (SRPs) of Jharkhand, Shri D.P. Vidyarthi and Shri Lal R.K. Shahdeo was organised through the virtual mode on 25.01.2022.
7. Shri Shekhar, Director (FA), delivered a lecture on competition law during the international conference on Kaleidoscopic Vision of Competition Law: A Way Forward, organised by the Marathwada Mitra Mandal's Shankarrao Chavan Law College, Pune, India, in collaboration with the Department of Legal & Social Studies, University of Chieti-Pescara, Italy, under AKAM, through the hybrid mode on 25.01.2022.

8. Dr. Sanjay Kumar Pandey, Adviser (Advocacy), delivered a lecture on “Regulator–Academia Interaction: Expectations and Learnings” in an online seminar organised by the Academic Society for Competition Law (ASCOLA), India Chapter, on 17.02.2022.

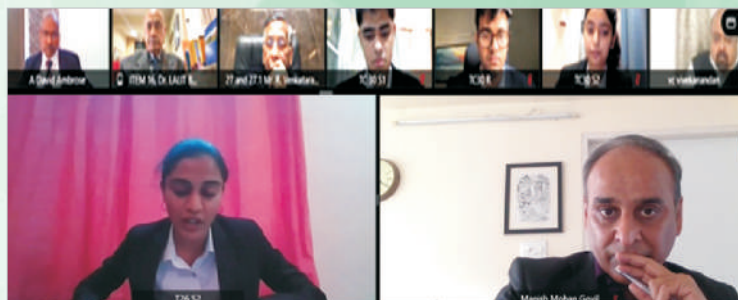


9. Ms. Sayanti Chakrabarti, Director (Economics), addressed the participants in the Faculty Development Programme (FDP) organised by Sharda University, School of Business, through the virtual mode on 17.02.2022.
10. Shri Saurabh, Joint Director (Economics), judged the semi-final rounds of the CCI–DNLU 2nd Justice G.P. Singh Memorial National Corporate Law Moot Court Competition, organised by the Dharamshastra National Law University (DNLU), Jabalpur on 20.02.2022 through the virtual mode.
11. Shri Jaideep Singh, Deputy Director (Law), judged the semi-final rounds of the CCI–DNLU 2nd Justice G.P. Singh Memorial National Corporate Law Moot Court Competition, organised by the Dharamshastra National Law University (DNLU), Jabalpur on 20.02.2022 through the virtual mode.
12. Dr. K.D. Singh, Director (Law), judged the final round of the CCI–DNLU 2nd Justice G.P. Singh Memorial National Corporate Law Moot Court Competition, organised by the Dharamshastra National Law University (DNLU), Jabalpur on 20.02.2022 through the virtual mode.

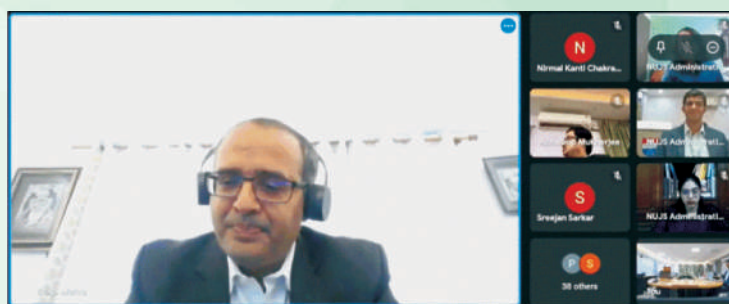


13. Ms. Neha Raj, Joint Director (Law), judged the semi-final rounds of the Competition Commission of India–Hidayatullah National Law University (CCI–HNLU) 12th Justice Hidayatullah Memorial National Moot Court Competition, organised by HNLU through the virtual mode on 20.02.2022.
14. Shri Yogesh Kumar Dubey, Joint Director (Economics), judged the semi-final rounds of the Competition Commission of India–Hidayatullah National Law University (CCI–HNLU) 12th Justice Hidayatullah Memorial National Moot Court Competition, organised by HNLU through the virtual mode on 20.02.2022.

15. Shri Manish Mohan Govil, Adviser (Combination) judged the final round of the Competition Commission of India–Hidayatullah National Law University (CCI–HNLU) 12th Justice Hidayatullah Memorial National Moot Court Competition, organised by HNLU through the virtual mode on 20.02.2022.



16. Shri Sukesh Mishra, Director (Law), addressed the participants at the two day International Conclave on Contemporary Issues in Administrative Law organised by the West Bengal National University of Juridical Sciences (WB-NUJS), Kolkata, on “Tribunals and Justice Delivery System with a Special Focus on Competition Commission” through the virtual mode on 20.02.2022.



17. Ms. Bhawna Gulati, Joint Director (Law), delivered a lecture on “Competition Law and Anti Trust in E-commerce” at the 15th national webinar organised by KLE Society, KLE College of Law, Navi Mumbai, on the theme “Competition Law and Entrepreneurship” through the virtual mode on 21.02.2022.

18. Shri Anil, Deputy Director (Economics), spoke on “Competition Law and Aspects in Light of COVID-19” at the 15th national webinar organised by KLE Society, KLE College of Law, Navi Mumbai, on the theme “Competition Law and Entrepreneurship” through the virtual mode on 22.02.2022.

19. Shri Kamal Sultanpuri, Deputy Director (Law), spoke on “Role of International Co-operation in Development of Competition Law in India” at the 15th national webinar organised by KLE Society, KLE College of Law, Navi Mumbai, on the theme “Competition Law and Entrepreneurship” through the virtual mode on 23.02.2022.

 A promotional banner for a webinar series. At the top, it features logos for '100th CENTENARY', 'KLE Society's KLE COLLEGE OF LAW Kalamnoli, Navi Mumbai', and '75 Azadi Ka Amrit Mahotsav'. The main text reads '15th NATIONAL WEBINAR SERIES ON COMPETITION LAW & ENTREPRENEURSHIP 17 -23 February, 2022'. Below this, three speakers are listed with their photos, titles, and session details:

- Ms. Bhawna Gulati**, Joint Director, Anti-Trust Division, CCI. Date: 21/2/2022, Time: 11:30 AM. To join the Session: [Click here](#).
- Shri Anil**, Deputy Director, Research & Trend Analysis Division, CCI. Date: 22/2/2022, Time: 11:30 AM. To join the Session: [Click here](#).
- Shri Kamal Sultanpuri**, Deputy Director, International Cooperation Division, CCI. Date: 23/2/2022, Time: 11:30 AM. To join the Session: [Click here](#).

20. Shri Arpan Sharma, Deputy Director (Law), judged the 7th NLIU–Trilegal Summit on Corporate and Commercial Laws, organised by the National Law University, Bhopal, through the virtual mode on 26.02.2022.



21. Shri V. Sriraj, Joint Director (Law), delivered a lecture on “Arbitration Law Versus Competition Law” in the National Conference on Neo-Modern Corporate and Competition Law, organised by the VIT School of Law in collaboration with the CCI and conducted through the virtual mode on 04.03.2022.

22. Shri K. P. Anand, Joint Director (Law), delivered a lecture on “Overlapping Jurisdiction of Competition Law and Other Statutes/Authorities” in the National Conference on ‘Neo-Modern Corporate and Competition Law, organised by the VIT School of Law in collaboration with the CCI through the virtual mode on 04.03.2022.

23. Shri Manish Mohan Govil, Adviser (Combination), was a Keynote Speaker in Roundtable Event: Future of India’s Competition Law Regime, organised by ‘The Dialogue,’ through the virtual mode on 10.03.2022.



24. Shri Naresh Bodke, Director (Economics), was the Guest of Honour in the inauguration ceremony of the 1st Chanakya National Law University (CNLU)–CCI Moot Court Competition held in physical mode on 11.03.2022.



25. Ms. Sunaina Dutta, Joint Director (Law), judged the semi-final rounds of the 13th CCI–NLU Jodhpur Antitrust Moot Court Competition 2022, organised by National Law University, Jodhpur through the virtual mode on 12.03.2022.

26. Shri Mohanrao Ronanki Joint Director (Economics), judged the semi-final rounds of the 13th CCI–NLU Jodhpur Antitrust Moot Court Competition 2022, conducted through the virtual mode on 12.03.2022.

27. Shri Ved Prakash Mishra, Adviser (Legal Division), was the Guest of Honour at the valedictory ceremony and judged the final round of the 1st CNLU–CCI Moot Court Competition, organised by Chanakya National Law University, Patna (CNLU), conducted through the virtual mode on 13.03.2022.



28. Shri Ashutosh Kumar, Joint Director, (Economics) judged the semi-final Rounds of the 1st CNLU-CCI Moot Court Competition conducted through the virtual mode on 13.03.2022.

29. Ms. Sanskriti Jain, Deputy Director (Law), judged the semi-final rounds of the 1st CNLU-CCI Moot Court Competition, conducted through the virtual mode on 13.03.2022.

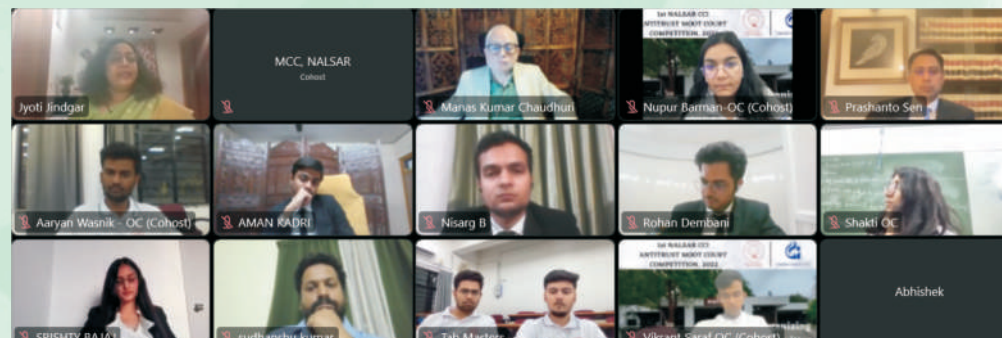
30. Ms. Payal Malik, Adviser (Economics), judged the final round and delivered the Executive Address in the 13th CCI–NLU Jodhpur Antitrust Moot Court Competition 2022, conducted through the virtual mode on 13.03.2022.



31. Shri Vipul Puri, Joint Director (FA), was a speaker in the panel discussion on “The Impact of Changing Merger Control Thresholds on the Start-Up Ecosystem,” organised by the Centre for Digital Future, India Development Foundation, conducted through the virtual mode on 14.03.2022.
32. Dr. Sangeeta Verma, Member, CCI delivered a lecture in the seminar course on “Competition Law & Practice,” organised by the National Law University, Delhi through the virtual mode on 16.03.2022.



33. Shri Vipul Puri, Joint Director (FA), made a case-based presentation and delivered a lecture in a seminar course on “Competition Law & Practice,” organised by National Law University, Delhi through the virtual mode on 16.03.2022.
34. Ms. Bhawna Gulati, Joint Director (Law), delivered a lecture in a seminar course on “Competition Law & Practice” and made case-based presentation organised by National Law University, Delhi through the virtual mode on 16.03.2022.
35. Shri Ashok Kumar Gupta, Chairperson, CCI was the Chief Guest and delivered the Inaugural Address in the 1st NALSAR–CCI Antitrust Moot Court Competition organised by the National Academy of Legal Studies and Research (NALSAR), Hyderabad, through the virtual mode on 17.03.2022.
36. Ms. Jyoti Jindgar Bhanot, Adviser (Antitrust Division) and Secretary (I/c), judged the final round and also participated in the valedictory ceremony of the 1st NALSAR–CCI Antitrust Moot Court Competition, conducted through the virtual mode on 20.03.2022.



37. Mr. Sachin Goyal, Joint Director (FA), judged the semi-final round of the 1st NALSAR–CCI Antitrust Moot Court Competition, conducted through the virtual mode on 20.03.2022.
38. Dr. Navdeep Singh Suhag, Deputy Director (Law) judged the semi-final round of the 1st NALSAR–CCI Antitrust Moot Court Competition, conducted through the virtual mode on 20.03.2022.
39. Shri Ashok Kumar Gupta, Chairperson, CCI delivered a public lecture on “Shaping Competition Regime in the Era of Digitalization,” organised by Administrative Staff College, Hyderabad (ASCI) through the virtual mode on 21.03.2022.



40. Dr. Navdeep Singh Suhag, Deputy Director (Law), delivered a lecture to the students of IILM Law School, Gurugram, on the topic “Jurisprudential Aspects of the Competition Act and its Relevance in the Current Scenario,” through the virtual mode on 25.03.2022.



Competition Law and Public Procurement

State	Resource Persons	Date	Organisation for which programme was conducted
Himachal Pradesh	Shri Rangilu Ram Patyal	07.01.2022	Office of the Principal Chief Conservator of Forest, Talland, Shimla
		22.01.2022	Officers/staff of the Forest Department undergoing training at the Himachal Pradesh Forest Academy
		18.02.2022	ACC Limited
		23.02.2022	Agriculture Department at Farmers Training Centre, Sundar Nagar, Himachal Pradesh
		21.03.2022	Industries Department, Himachal Pradesh
		22.03.2022	Himachal Pradesh Horticulture Development Project (HPHDP)
Uttarakhand	Shri Rajiv Rautela	18.01.2022	Rural Works Department, Govt. of Uttarakhand
		21.01.2022	Dehradun Institute of Technology
		24.01.2022	Kumaun Garhwal Chamber of Commerce and Industry (KGCCI)
		18.02.2022	Rural Works Department
		22.02.2022	Officers of Govt. Sugar Mills Limited
		03.03.2022	Irrigation Department, Dehradun, Uttarakhand
		04.03.2022	Chief Development Officers of District Tehri Garwal
Telangana	Shri R. C. Kumar and Shri Prasanna Kumar	21.01.2022	Kakatiya University, Warangal
		03.02.2022	Office of Engineer-in-Chief, Irrigation & CAD Department
		11.02.2022	Office of Director General, Anti-Corruption Bureau
		25.02.2022	Social Welfare Residential Education Institutions Society, Tribal Welfare Residential Education Institutions Society, and Mines and Geology Department
		05.03.2022	Medical Devices Park, Sultanpur, Telangana
		17.03.2022	Hindustan Petroleum Corporation Ltd. (HPCL), South Central Retail Zone, Hyderabad
		24.03.2022	Officers & staff of Commissionerate of Printing Stationary & Stores Purchase, Telangana

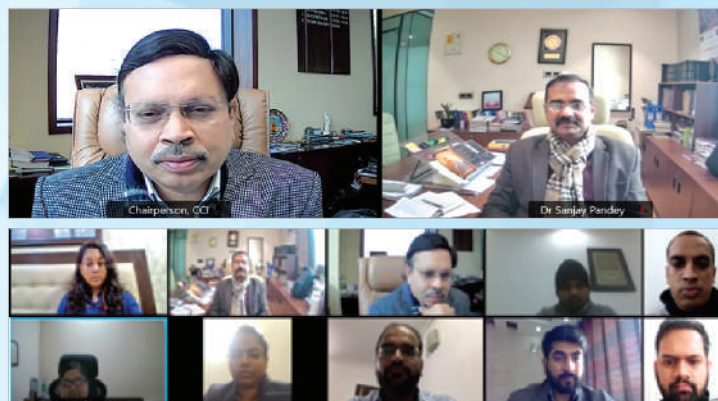
Assam	Shri Umesh Kumar and Shri Tanuj Goswami	24.01.2022	Various departments under the Hill Council of the Dima Hasao District at Halflong
		27.01.2022	Assam Seed Corporation
		01.02.2022	Office of Deputy Commissioner, Golpara
		04.02.2022	Office of the Deputy Commissioner, South Salmara
		07.02.2022	Assam State Rural Livelihood Mission
		11.02.2022	Namrup Thermal Power Station
		24.02.2022	Office of Deputy Commissioner, Dhubri
		25.02.2022	Karbi Anglong Autonomous Council, Diphu
		03.03.2022	Lakwa Thermal Power Station (APGCL)
		11.03.2022	Office of the Director, Agricultural Govt. of Assam
		23.03.2022	Office of Deputy Commissioner, Bongaigaon District, Assam (Tentative)
		31.03.2022	Karbi Langpi Hydro Electric Project, Assam
Uttar Pradesh	Shri Laxmi Shanker Singh	11.01.2022	Govt. departments of District Budaun
		29.01.2022	KG College, Moradabad
		03.02.2022	Health/Medical Department, Moradabad
		18.02.2022	Chief Development Officer, Shahjahanpur
		08.03.2022	Muradabad Vikas Pradhikaran, Uttar Pradesh
		29.03.2022	Panchayat Development Animal Husbandry and Cooperative Society, Lakhimpur Kheri
Kerala	Shri Krishna Kumar K. N.	24.02.2022	PSUs, govt. departments, and trade and industry associations
		17.03.2022	MSME, trade and industry associations, PSUs, and govt. Departments in Malappuram, Kerala
		23.03.2022	Members of trade and industry associations & officers from Departments in Kozhikode, Kerala
Pondicherry	Dr. S. Vaithianadane	25.02.2022	Civil Supplies and Industries Department
Haryana	Shri S. P. Arora	03.02.2022	Haryana Vidyut Prasaran Nigam Limited



CAPACITY BUILDING

1. Capacity Building Division organised a virtual five-day attachment programme for eight (08) trainee officers of the Indian Corporate Law Service (ICLS) as part of their professional course under on-the-job (OTJ) training programme on the following days:
 - 06–07.02.2022 with CCI; and
 - 10–12.02.2022 with O/o Director General (DG) CCI

Shri Ashok Kumar Gupta, Chairperson CCI had an interactive session with the trainee officers of the ICLS

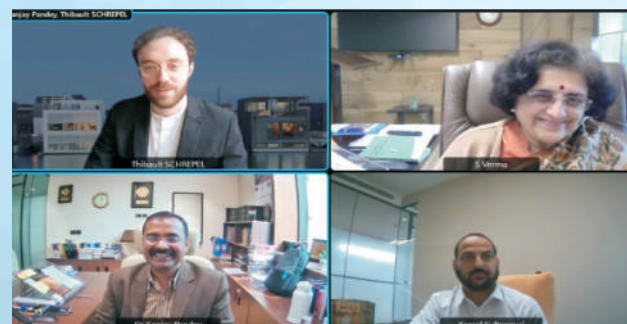


2. CCI organised the 2nd Virtual Meet (Webinar) of Cartel Working Group (CWG) 2021–22 under Network of Indian Competition Experts (NICE) on 04.02.2022. The webinar was attended by ten CWG members along with CBD officers and research associates. The webinar was organised to understand the status of their research and have discussion amongst the members.
3. CCI organised a virtual peer-to-peer (P2P) session by Shri. Vipul Puri, Joint Director (FA), on the topic “Overview of Section 5 & 6 of the Competition Act, 2002 with Special Focus on Green Channel” for the officers and Resarch Associates (RAs) of CCI & O/o DG, CCI on 10.02.2022.

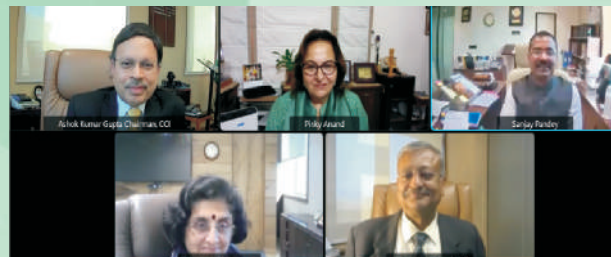
4. The 38th lecture under the Distinguished Visitors Knowledge Sharing Series (DVKS) was delivered virtually by Dr. Rakesh Mohan Joshi on the topic “India's Global Competitiveness: Key to its Economic Success” on 11.02.2022 for the officers of CCI & O/o DG, CCI.



5. The 27th lecture under the Special Lecture Series (SLS) was delivered virtually by Dr. Thibault Schrepel, Associate Professor, Vrije Universiteit Amsterdam on the topic “Blockchain Antitrust” on 24.02.2022 for the officers of CCI & O/o DG, CCI.



6. 2 officers from CCI & O/o DG, CCI attended 5-days Training Programme on “Seizure and Forensic Analysis of Mobile hands sets (ii) Mobile Forensics (iii) Call Detail Record analysis, IPDR analysis and Tower Dump Analysis” organised by CBI Academy at Ghaziabad during 7 to 11.03.2022.
7. To commemorate the occasion of International Women's Day, 28th lecture under Special Lecture Series (SLS) was delivered virtually by Ms. Pinky Anand, Senior Advocate and former Additional Solicitor General of India on the topic “Leges Pro Muieribus (Laws for Women) - Enactment to Implementation in India” on 08.03.2022 for the officers of CCI & O/o DG, CCI.
8. 12 officers from CCI & O/o DG, CCI attended a residential Training Programme on “Code of Civil Procedure, 1908 & Indian Evidence Act, 1872” organised by Himachal Pradesh Judicial Academy at Shimla during 09 to 11.03.2022.
9. 2 officers from O/o DG, CCI attended a week's residential training programme on “Social Media Investigation” organised by Bureau of Police Research and Development (BPRD), Central Academy for Police Training (CAPT), Bhopal during 14 to 19.03.2022.



ENGAGING WITH THE WORLD

Participation of CCI in various international Meetings/Seminars/Conferences etc:

1. Dr. Sanjay Pandey, Adviser (Law), and Shri Kamal Sultanpuri, Deputy Director (Law), participated virtually in the United Nations Conference on Trade and Development (UNCTAD) Working Group on Cross Border Cartels on 31.01.2022.
2. Memorandum of Understanding between Competition Commission of India (CCI) and Competition Commission of Mauritius (CC) was signed virtually on 23.02.2022. Shri Ashok Kumar Gupta, Chairperson, CCI, and Mr. Mahmud Aleem Bocus, Chairperson, CC, signed the MoU.



Mr. Mahmud Aleem Bocus, Chairperson, CC, during the signing of Memorandum of Understanding (MOU) between Competition Commission of India and the Competition Commission of Mauritius held virtually on 23.03.2022

3. Two officers participated in the OECD Competition Open Day online event on 23.02.2022.
4. Five officers participated in the three-day workshop webinar organised by the OECD Korea Policy Centre on Market Studies for Competition Advocacy and Enforcement during 08,10 and 11.03.2022. Ms. Payal Malik, Adviser, (economics) was the speaker for the session on practices from the region and virtually presented on pharmaceutical market studies in India on 11.03.2022.



Privatisation of Air India: Harnessing Private Sector Efficiencies and Discipline

India's Tata Group took control of the state-run carrier Air India, regaining ownership of the airline after 70 years. The strategic disinvestment of Air India was completed with the government receiving about USD 360 million in equity and Tata taking over more than USD 2 billion of Air India's debt. Tata Group already operates two other airlines—Vistara, in a joint venture with Singapore Airlines (SIAL.SI), and Air Asia India, which it operates in partnership with Air Asia Group (AIRA.KL). Air India has been indicated to have the biggest competitive advantage in terms of its ability to fly non-stop to destinations such as the United States and Europe, where it enjoys lucrative flying rights and airport slots whereas foreign carriers such as Emirates can only compete with stopover options.

Privatisation of a government undertaking has multiple positives. Firstly, a government undertaking may be inefficient in its operations because of multiple constraints and challenges due to factors such as inconsistent service standards, underutilisation of capacity, dismal revenue generation skills, low productivity, etc. In such scenarios, privatisation brings efficiency and a better business proposition. Private companies are often well-run on commercial decisions and thereby, ensure better usage of resources for the benefit of consumers.

Secondly, from a public policy

perspective, the social value of privatisation depends on aggregate efficiency benefits over the longer term. With no hand outs for the already debt-laden Air India, the government will now have the bandwidth to redirect its resources to other projects that are critical for economic development. Thus, the Air India privatisation can be a significant booster for the economy, industry, and markets.

In light of the above, it is important to understand the factors that affect efficiency, which may include competition, regulation, financial/legal institutional development, and enforcement of property rights. There is significant empirical evidence that privatisation can lead to improved efficiency. Despite limited data and methodological difficulties, there is overwhelming support for the notion that privatisation brings about a significant increase in profitability, real output, and efficiency of privatised companies.

It is pertinent to note that the operating architecture of Public Sector Enterprises (PSEs) creates conditions where they either have no incentive to compete or lack the ability to compete. Government ownership imposes special obligations on PSEs. The basic assumption is that the government can use these enterprises as instruments to achieve social policy goals; for example, Air India had to subsidise certain classes of

customers. This, coupled with inflexibility in raising capital, HR policies, etc., distorts the level playing field and put the PSEs at a competitive disadvantage relative to private sector players. Thus, privatisation removes these shackles and helps improve overall competition in the market.

Privatisation will also solve the problem of moral hazard for Air India. Moral hazard is a situation in which one party gets involved in a risky event knowing that it is protected against the risk and the other party will incur the cost. This problem is most common in PSEs, wherein, if and when they face risk of failure, the government would come to their bailout. Hence, it encourages the enterprises to engage in inefficient behaviour. In the scenario, the taxpayer has to pay the bill for recapitalisation from time to time. For instance, Air India had received an equity infusion of INR 30,520.21 crore from 2011 to 2019, which includes financial support as per Turnaround Plan/Financial Restructuring Plan (TAP/FRP) and cash support in FY 2018–19.

Thus, the privatisation of Air India presents an opportunity to increase overall efficiency of the enterprise and, in the process, enhance competition in the market. It is hoped that the aviation industry is in for healthy competition with the emergence of Air India as a credible competitor.



DEVELOPMENTS IN OTHER JURISDICTIONS

AUSTRALIA

Australian Competition and Consumer Commission (ACCC) allowed Mereenie gas field joint venture.

ACCC has issued a determination allowing joint marketing arrangements between the four owners of the Mereenie Gas Field in the Northern Territory. It is located in the Amadeus Basin, approximately 250 km west of Alice Springs.

Central Petroleum, Macquarie Mereenie, New Zealand Oil and Gas, and Cue Energy are currently the joint venture partners in the Field.

ACCC authorisation of the arrangements permits joint venture participants to jointly market gas from the Mereenie Field until February 2027. Within this period, they can enter into gas supply agreements with customers on common terms and conditions that could operate up to February 2032.

UNITED KINGDOM

Competition and Market Authority (CMA), UK moves into a “new phase” of the Google Privacy Sandbox probe

The UK CMA will help Google develop its initiative to remove third-party cookies from its Chrome browser before monitoring the company’s global compliance with pro-competitive commitments for the next six years, the agency said while formally accepting the proposals.

CMA made binding a set of commitments that aims to ensure that Google’s market position in online advertising is not unfairly strengthened by its decision to remove third-party cookies under its Privacy Sandbox initiative. Cookies allow advertisers to track a user across different websites so that they can offer targeted ad services. CMA first began investigating the proposed Privacy Sandbox in January 2021 over concerns that Google would reinforce its position in online advertising by removing other advertisers’ ability to track users on its Chrome browser.

Both CMA and the UK’s Information Commissioner’s Office will be involved in developing and testing the Privacy Sandbox proposals, with an eye to achieving the best outcomes for consumers in terms of competition and privacy. Based on feedback from CMA’s first consultation on its proposals, Google has now also agreed to engage in a more transparent process when developing the Privacy Sandbox, which includes engaging with third parties and publishing test results.

CMA will further be able to order Google to address the issues raised by itself or others during the development process. The company must implement a mechanism to do so “without delay.” Google will only be able to remove third-party cookies with the CMA’s approval. If the agency is unsure that its competition concerns have

been addressed, it said it may reopen the probe, impose interim measures, or issue a decision.

Once third-party cookies are removed, Google has agreed to restrict the sharing of data within its ecosystem to ensure that it doesn’t gain an advantage over competitors. It has also promised not to self-prefer its own advertising services.

GERMANY

Bundeskartellamt’s 2021 market power report on the electricity generation sector

The competition authority of Germany, Bundeskartellamt, has published its third market power report on the conditions of competition in the generation of electricity in 2021. As in the previous years, the report analyses the market power situation in the generation and first-time sale of electricity. For the first time, the report provides indicators of the market situation in certain areas of balancing services in greater detail. The report analyses the market and competition conditions on the German-Luxembourg market for the first-time sale of electricity from 01.10.2020 up to and including 30.09.2021. The analyses are based on extensive data on the utilisation of all power plants in Germany. The results of the analyses show that RWE is currently the only power-generating company which clearly exceeds the threshold for the presumption of

market dominance applied by the Bundeskartellamt. The analyses also show that power plant capacities outside Germany have become more important for the market for the first-time sale of electricity in Germany.

UNITED STATES

FTC approves final order imposing divestitures and protecting retail fuel customers following Global Partners LP's Acquisition of Wheels

Following a public comment period, the Federal Trade Commission has approved a final order settling

charges that Global Partners LP's acquisition of 27 retail gasoline and diesel outlets owned or operated by Richard Wiehl violates federal antitrust laws.

Under the terms of the final settlement, Global and Wiehl must divest to Petroleum Marketing Investment Group six Global retail fuel outlets and one Wheels retail fuel outlet, among other conditions. To further protect competition in relevant markets, the order also mandates that both Global and the divestiture buyer, Petroleum Marketing Investment Group, obtain Commission's prior approval for

certain future deals.

First announced in December 2021, the complaint alleged that the acquisition would have significantly increased concentration in markets for the retail sale of gasoline in the Connecticut towns and cities of Fairfield, Bethel, Milford, Wilton, and Shelton. In all these local markets, except Wilton, the acquisition would also have harmed competition for the retail sale of diesel fuel, according to the complaint.

The Commission vote to approve the final order was 4–0.



KNOW YOUR COMPETITION LAW

'REFERENCE' before the Competition Commission of India

Section 19 of the Act provides for inquiry by the Commission into certain agreements and dominant positions of enterprise. Section 19 (1)(b) provides that Commission may inquire into any alleged contravention of the provisions of Section 3 or 4, either on its own motion or on a reference made to it by the Central Government, a State Government, or a statutory authority.

Regulation 2(j) of the Competition Commission of India (General) Regulations, 2009 (General Regulations) defines the word "reference." As per Regulation 2(j), "reference" means a reference: (i) received from the Central Government or a State Government or a statutory authority under Section 19(1)(b) of the Act; (ii) received from a statutory authority

under Section 21 of the Act for opinion; (iii) sent to a statutory authority for opinion by CCI under Section 21A of the Act; or (iv) received from the Central Government or a State Government for opinion under Section 49(1) of the Act.

Further, Regulation 10 provides for the contents of the reference. Regulation 10(1) of General Regulations provides that the information or reference shall state the legal name of the person/ enterprise giving the information/ reference; complete postal address in India for delivery of summons or notice by CCI, with the Postal Index Number code; telephone number, fax number, and electronic mail address, if available; mode of service of notice or documents preferred; legal name and

address(es) of the enterprise(s) alleged to have contravened the provisions of the Act; and legal name and address of the counsel or other authorised representative, if any. Further, Regulation 10(2) provides that the information or reference shall also contain the statement of facts and details of the alleged contravention of the Act, together with a list enlisting all documents, affidavits, and evidence, as the case may be, a succinct narrative in support of the alleged contraventions, and relief sought for. Regulation 10(3) specifically provides that the contents of the information or the references shall be complete and duly verified by the person submitting it. Regulation 11(2) of the General Regulations mandates that the reference shall be signed and authenticated by an officer not below the rank of Joint

Secretary to the Government of India or an equivalent officer.

Regulation 15 of the General Regulations lays down the procedure for scrutiny of information or reference. As per Regulation 15(1), each information/reference shall be scrutinised by the Secretary to check whether it conforms to these regulations, and the defects, if any, shall be communicated to the party within a reasonable time. Regulation 15(2) provides that the information provider under Sections 19(1)(a) and (b) and 49(1) of the Act shall remove the defects within 30 days in case of an information/reference under Section 19(1)(b) of the Act or 15 days in case of a reference under Section 21 or Section 49(1) of the Act. Further, Regulation 15(3) provides that the information or the reference or the application connected therewith shall be treated as invalid in case the defects are not removed by the Central Government, the State Government, or the statutory authority or the concerned party, as the case may be. Further, as per Regulation 15(5), nothing can preclude CCI to use the contents of such information or reference in any manner as may be deemed fit, for inquiring into any possible contravention of any provision of the Act.

The very issue of non-compliance of the procedures to be followed by the appropriate authority while making a reference was raised before the Madras High Court. One of the grounds of challenge raised before the Single Judge, Madras High Court, was that the reference made under Section 19(1)(b) of the Act is not valid because the competent authority, while forwarding the letter

to CCI, failed to adhere to the mandatory requirements with regard to the Reference provided under General Regulations, 2009. The Ld. Single Judge, while dismissing the petition without expressing any view on the merits, held that a defective reference will not make the proceedings before CCI invalid or void and that it can merely be termed as an irregular procedure and not an illegal procedure. Aggrieved by the said order passed by the Ld. Single Judge, an appeal was filed before the Division Bench of the Hon'ble Madras High Court.

The Division Bench, while going through the provisions enumerated under the Act as well the General Regulations related to the forwarding of the Reference and procedure there after, held that reading Regulation 15(3) together with Regulation 15(5), Regulation 40 and Section 15(c) will make Regulation 15(3) directory and not mandatory. Regulation 40 of the General Regulations provides that the failure to comply with any requirement of these regulations shall not invalidate any proceeding merely by reason of such failure, unless Commission is of the view that such failure has resulted in a miscarriage of justice. Further, Section 15(c) of the Act provided that no act/proceeding of Commission shall be invalid merely by reason of any irregularity in the procedure of Commission not affecting the merits of the case. Reading these provisions together would indicate the clear intention of the Legislature that non-compliance of the regulations in each case shall not invalidate the proceedings initiated by CCI. It is only in two situations, i.e., if there is an

irregularity or non-compliance of the procedures affecting the merits of the case and if there is any irregularity or non-compliance of the procedures or regulations resulting in miscarriage of justice, that Regulation 15(3) will come into operation. In the cases not affecting the merits of the case or causing miscarriage, the non-compliance of the regulations will not invalidate the proceedings before CCI. Adding Regulation 15(5) after Regulation 15(3), and the existence of Section 15(c) of the Competition Act and Regulation 40 of the General Regulations, empowers CCI as an expert body to consider whether the defective reference carries any merit for further adjudication. It is only the form of reference that becomes invalid under Regulation 15(3) and not what the reference contains in terms of information. It was also clearly held that the writ court cannot interfere with any preliminary order passed by CCI on the grounds of procedural lapses, either in making the reference or entertaining the same.

Dismissal of the Special Leave Petitions filed before the Hon'ble Supreme Court against the aforesaid judgement delivered by the Division Bench of Madras High Court and the Hon'ble Supreme Court not interfering with the same reaffirmed the position of law that the non-compliance of the regulations will not render the proceedings initiated by CCI invalid. Rather, the proceedings before CCI will be invalidated only if the merits of the case are affected by the non-compliance and if the non-compliance results in a miscarriage of justice.



A. New joining on deputation basis:

Ms. Ranjana Chaudhary and Shri Sanjoy Bhattacharya joined as Deputy Director General in the O/o. DG, CCI on deputation basis w.e.f. 17.01.2022 and 14.02.2022, respectively, and Shri Dheeraj Rohilla joined as Assistant Director General (CS) in O/o. DG, CCI, on deputation basis w.e.f. 11.02.2022.

Shri Pramod Kumar Pramod joined as Office Manager (CS) in CCI on deputation basis w.e.f. 24.03.2022.

B. Relieving: Shri Sugata Ghosh Dastidar, Secretary, CCI, relieved w.e.f. 08.03.2022 on own request, consequent upon his promotion to the grade of Additional Controller General of Defence Accounts in the parent cadre.

C. Retirement: Shri Ashok Raj Gupta, Deputy Director (CS), retired on superannuation on 31.03.2022.

D. Promotions in CCI:

Consequent upon their regular promotion in CCI, the following Officers assumed the charge of a higher post w.e.f. 03.01.2022 as per details mentioned below:

Shri Alok Tripathi and Shri Shekhar as Director (FA), Shri Rajinder Kumar as Director (Economics), Shri Arvind Kumar Anand as Joint Director (Economics), Ms. Jyotsna Yadav as Joint Director (FA), and Ms. Vasu Sharma as Assistant Director (CS).

E. Engagement of Research Associates/Experts:

One RA and one Expert [Ms. Prerna Nagas RA (Law) w.e.f. 10.01.2022 and Shri Avimukteshwar Nath Singh as Expert (Law) w.e.f. 11.03.2022] were engaged in CCI/DG's office.

F. Advertisement for recruitment/engagement:

- i) An advertisement was issued on 21.01.2022 for the engagement of one Expert (Forensic Audit) Level-III on a contract basis.
- ii) A vacancy circular was issued on 03.02.2022 to invite applications to fill up two posts of Additional Director General in the office of DG, CCI on deputation basis.
- iii) A vacancy circular was issued on 24.02.2022 to invite applications to fill up 13 posts (06 Professionals and 07 Support Staff) in CCI on deputation basis.



Shri Ashok Kumar Gupta, Chairperson, CCI during the signing of Memorandum of Understanding between Competition Commission of India and Competition Commission of Mauritius held virtually on 23.02.2022.

Competition Commission of India

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

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

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