



The Quarterly Newsletter of Competition Commission of India (CCI)

Fair Play

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In deference to stakeholder concerns and based on experience in combination review, CCI has from time to time amended the Combination Regulations in order to streamline its rules and procedures. A number of positive changes have been made recently to bring in more simplicity and clarity. They are briefly described as under:

- The amended regulations have done away with the requirement of verification and notarisation of the notice as notarisation is a time-consuming process and given that many of the notifying parties are based outside India, notarisation requirements were cumbersome for the parties. In its place, a declaration from the parties to the combination would, henceforth, suffice for the purpose of filing notice. The consequential amendment in the filing notice has been carried out.
- Unlike earlier when the person signing the notice on behalf of the company was required to be authorised by the board of directors, the requirement of furnishing board resolution has been relaxed. The companies are now free to authorise the person signing in any manner consistent with the law applicable to such companies.
- Under the earlier regulations, if a party communicated its intent to make a notifiable acquisition to a statutory authority, they were required to file a notice with the Commission within 30 days of such a communication. The term "statutory authority" encompasses all the authorities created by way of a statute and hence filing information with a statutory authority potentially triggered the requirement of filing the notice with the Commission. This has now been narrowed down to public announcements under Takeover Regulations to SEBI alone.
- There were requests by stakeholders that there should be a provision of hearing before invalidation of notices so that parties are afforded an opportunity to plead their case against invalidation. The Commission has amended the regulations to provide for hearing the parties before deciding to invalidate a notice in case it is incomplete and/or is not in accordance with relevant regulations.
- Under the earlier regulations, if an acquirer already held 25% or more shares/voting rights of a company, it could not acquire more than an additional 5% of the shares/voting rights of that company in a financial year without seeking prior approval of the Commission. Considering that a person holding 25% or more shares/voting rights enjoyed the same degree of control as the person holding less than 50% shares/voting rights, limiting acquisition to 5% shares/voting rights per financial year has had no impact regarding change in control. Therefore, the limit has been relaxed and acquisition of shares/voting rights between 25% to less than 50% does not require prior approval of the Commission.
- Concerns were expressed by stakeholders regarding the need for clarity in regard to interpretation of the term "solely as an investment" used in Item I of Schedule I. The Commission has now provided an explanation for the term "solely as an investment" in line with the international best practices. Under the amended regulations, an investment of up to 10% without a board seat or intention to nominate a director or participate in affairs of the target company qualifies for "solely as investment" criteria. Prior approval of the Commission is not required for such an investment.

CCI has completed more than four years of effective and timely review of combination cases. CCI's experience is that most combinations do not raise competition concerns. However, in cases where the combination is likely to adversely affect competition in the relevant market, CCI rather than prohibiting it, may approve the combination subject to certain remedies or modifications. Remedies are designed keeping in view the specific competitive harm arising from the combination. The aim is to preserve effective competition with its associated advantage of lower price, better quality, consumer choice and innovation etc., without foregoing to the extent possible, the benefits of the combination. The Commission may choose a behavioural or structural remedy or even a hybrid remedy, depending on the nature of the combination and its impact on competition in the relevant market.

(Devender K. Sikri)

IN FOCUS

MERGER REMEDIES

MERGER CONTROL

Enterprises often endeavour to grow through inorganic means. This usually takes the form of acquisitions, mergers and amalgamations, collectively known as mergers or combinations. These consolidate control of businesses, their assets (tangibles and intangibles) and their markets, and thereby provide an opportunity to harness improved economies of scale and scope from use of combined economic power and market power and to enhance performance.

Most mergers raise no serious competition concerns from concentration of market power and do not call for any State intervention. However, some mergers carry the potential of detriment to competition. The State, therefore, has a mechanism to prevent the prospective anti-competitive effects of proposed mergers through appropriate remedies, including prohibition, if necessary. Such a mechanism is known as 'merger control' in competition parlance. Merger control works ex ante: it allows those proposed mergers which are not likely to have an appreciable adverse effect on competition (AAEC); it also allows those proposed mergers, which can be purged of AAEC through appropriate remedies, along with those remedies; and it restrains those mergers, which are likely to

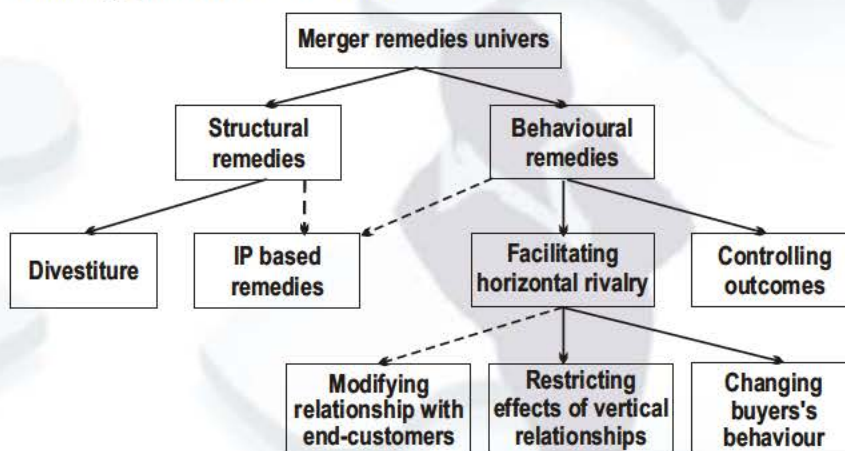
have AAEC and such AAEC cannot be remedied.

MERGER REMEDIES

Remedies are used by competition agencies to resolve and prevent the potential harm to the competition arising from a merger. These are the conditions on merging parties when a merger, which has likelihood of AAEC, is permitted. The alternative to imposing remedies is the prohibition of the merger. Such an action may not be optimal if there are significant efficiency gains to be derived for

eliminate or reduce the competition concerns.

Merger remedies are usually of two types: (a) structural remedies which cause a permanent change in the structure of the market concerned, and (b) behavioural remedies which require a commitment by the merging parties not to act in a certain manner in future. International Competition Network (ICN) envisages the following universe of remedies:



the merging parties and the economy. A competition authority may prohibit a merger if it creates a significant impediment to the competition in the relevant markets. However, such actions are rare. The vast majority of mergers that raise competition concerns are cleared with appropriate remedies which

Structural remedies include divestment of assets or shares, termination of exclusive distribution agreements, severance of vertical links with customers, sale of a part of a business, the transfer or licensing of intellectual property rights, etc. These are imposed either as a condition precedent to a merger,

or their completion may be required within a certain period from the merger. Behavioural remedies include obligations such as access on non-discriminatory terms, firewall provisions or transparency provisions, regulation of prices, etc. These put limitations on future business behaviour or cast an obligation to adhere to a specified conduct for a given period of time pursuant to the consummation of the merger. These are prospective and imposed after merger clearance.

KINDS OF MERGERS

There are broadly two types of mergers, namely horizontal mergers and vertical mergers. Horizontal mergers merge current or potential competing enterprises. These may result in concentration of market power due to elimination of the actual or potential competition among the merging enterprises. If a competitive concern is anticipated to arise from such a merger, the typical remedy is to prevent common control over some or all of the assets or markets. Divestiture of overlapping assets, usually an existing business entity, is generally mandated in horizontal mergers to effectively preserve competition that the merger otherwise would eliminate. Behavioural remedies are generally used to address competition concerns in vertical or conglomerate mergers.

The European Commission tends to prefer structural remedies, as these (a) eliminate competition concerns resulting from horizontal overlaps, and (a) are

easier to implement and do not require medium or long-term monitoring. It does not prefer behavioural remedies as these generally do not eliminate competition concerns fully. However, it considers behavioural remedies in conglomerate mergers, subject to an effective monitoring system put in place by the parties. The US Department of Justice (DOJ) also prefers structural relief in the form of a divestiture to remedy the anticompetitive effects. It may require a non-structural, or conduct, relief in aid of a required divestiture to remedy those effects. Such additional relief may include supply agreements, employee obligations, confidentiality protections, and other provisions necessary to support a successful divestiture.

Vertical mergers involve enterprises that do not operate in the same markets, and may not have an overlap of assets or markets. A standalone vertical merger does not change the number of enterprises competing to produce a particular product or service. Nevertheless, such mergers can create new incentives and enhance the ability of the merged enterprise to impair the competition. In most vertical merger cases, the DOJ considers tailored conduct remedies designed to prevent conduct that may harm consumers while still allowing the efficiencies that may come from the merger to be realized. It also considers structural remedies in vertical mergers when the vertical integration is a small part of a larger deal.

CHOOSING AN APPROPRIATE REMEDY

Both types remedies have their benefits and limitations. The choice of remedy is guided by its suitability to address the competition concerns at hand. The relevant question is: whether the remedy proposed would effectively remove most of the competition concerns arising from the proposed merger. The ICN, which has collated the best practices of all mature competition jurisdictions, asserts that remedies should be assessed in relation to their effectiveness in dealing with competitive detriments and their burden of operation in terms of costs incurred and merger benefits foregone. Accordingly, the following considerations should guide the design of an effective merger remedy:

- a. **Proportionality:** The remedies must be proportional - they must be apt, necessary and adequate to eliminate the competition problems of a merger and do no more. The competition authorities should seek to implement the least burdensome remedy, or a set of remedies, that is effective in eliminating the specific competitive detriments expected from a merger.
- b. **Effectiveness:** The remedies should be effective in eliminating the concerns inherent in the proposed merger. The European Commission argues that the remedies must eliminate the competition concerns entirely and has to be comprehensive

and effective from all points of view. These must be capable of being implemented effectively, fairly quickly, as the conditions of competition in the market may not last long.

- c. **Costs and Benefits:** These include:
- i. **Impact costs:** Remedies may result in distortions or inefficiencies in market outcomes. This is more likely to be the case in instances where behavioural remedies are used which intervene directly in market outcomes, especially over a long period. For example, price caps may discourage market entry by creating doubt concerning the ability to recoup investment or to maintain profitability. Similarly, non-price restraints may adversely affect investment decisions.
 - ii. **Operating costs:** These comprise the directly attributable costs of implementing and, if necessary, monitoring and enforcing remedies.
 - iii. **Benefits:** The endeavour is to realise at least some efficiencies or benefits expected from a merger that would otherwise be lost through prohibition. Particular benefits expected from a merger include lower

prices, higher quality, a greater choice of products or a greater rate of innovation. Jurisdictions differ significantly in how merger efficiencies and other benefits are defined and assessed. The merging parties normally bear the burden of demonstrating that relevant merger benefits are likely. A competition authority generally seeks to modify the choice or design of a remedy to minimise the impact on these efficiencies or other relevant benefits.

INDIA STORY

In many jurisdictions, it is the merging parties, which normally propose a package of remedies to the concerned competition authority. However, under section 31 (3) of the Competition Act, 2002, the Commission may propose appropriate modifications to the merger. However, regulations allow the parties to offer modifications, before the Commission has formed a prima facie opinion on the merger.

The Commission has thus far imposed remedies in two mergers:

- i. **Sun/Ranbaxy:** The Commission felt that the proposed merger was likely to result in AAEC in India in relevant markets for seven formulations. Accordingly, it

approved the proposed merger between Sun Pharma and Ranbaxy, subject to the parties carrying out the divestiture of their products relating to relevant markets for seven formulations. It directed that the proposed merger shall not take effect before the parties have carried out the divestiture of those formulations.

- ii. **Holcim/Lafarge:** The Commission felt that the proposed merger was likely to cause AAEC in the market for cement in the Eastern region of India. However, such adverse effect could be eliminated by suitable modification. The Commission approved the merger, subject to the parties carrying out the divestiture of their cement plants located at Jojobera and Sonadih.

CONCLUSION

The competition authorities choose a remedy to remove adverse competition effects and preserve merger-specific benefits. Merger remedies are tools in the hand of competition authorities to correct the market distortions that may arise from the proposed merger. The aim of merger remedies is, as stated by the ICN, to enable a modified outcome to mergers which restores or maintains competition while permitting the realisation of relevant merger benefits.

SECTION 3 & 4 ORDERS

All Kerala Chemists and Druggists Association, M/s Alkem Laboratories and Others Penalised for Anti-competitive Conduct

The Commission initiated an investigation against All Kerala Chemists and Druggists Association (AKCDA) and others pursuant to an information filed by one, Mr. P. K. Krishnan. Based on the findings of the investigation by Director General and submissions of the parties, the Commission held that AKCDA and M/s Alkem Laboratories, and some of their office bearers and officials

contravened the provisions of the Act. It was found that AKCDA was insisting that any person wishing to be a stockist in Kerala must have a 'No Objection Certificate (NOC)' from them and at its intervention, M/s Alkem Laboratories, a pharmaceutical company refused to deal with the informant as he did not have the said NOC. AKCDA limited and controlled supply of medicines and thereby contravened section

3(3)(b) read with section 3(1) of the Act. M/s Alkem Laboratories refused to deal with the informant at the instance of the AKCDA and affected the competition in the market adversely and appreciably in contravention of section 3(1) of the Act. The office bearers and officers of AKCDA and M/s Alkem Laboratories respectively were held responsible under section 48 of the Act.

Parties	Directions & Penalties
Parties	<ul style="list-style-type: none"> a. Cease and desist from indulging in any of the practices which are found to be anti-competitive; b. Refrain from associating Mr. A.N. Mohana Kurup, the then President, and Mr. Thomas Raju, the then General Secretary, with its affairs, including administration, management and governance in any manner for a period of two years; c. Organize at least five competition awareness and compliance programmes over the next six months in State of Kerala for its members; and d. Penalty of Rs. 4,35,778.
Mr. A.N. Mohana Kurup, the then President of AKCDA	<ul style="list-style-type: none"> a. Cease and desist from indulging in any of the practices which are found to be anti-competitive; and b. Penalty of Rs.50,204.
Mr. Thomas Raju, the then General Secretary of AKCDA	Cease and desist from indulging in any of the practices which are found to be anti-competitive.
M/s Alkem Laboratories	<ul style="list-style-type: none"> a. Cease and desist from indulging in any of the practices which are found to be anti-competitive; and b. Penalty of Rs.74,63,10,000
Mr. Johnson Mathew, Alkem Laboratories	<ul style="list-style-type: none"> a. Cease and desist from indulging in any of the practices which are found to be anti-competitive; and b. Penalty of Rs. 71,371.
Mr. T. K. Haridas, Alkem Laboratories	<ul style="list-style-type: none"> a. Cease and desist from indulging in any of the practices which are found to be anti-competitive; and b. Penalty of Rs.34,248.



Jet Airways (India) Limited, Inter Globe Aviation Limited and Spice Jet Limited Penalised for their Anti-competitive Conduct

The Commission initiated an investigation pursuant to an information filed by *Express Industry Council of India*. Based on the findings of the investigation and submissions of the parties, the Commission found that Jet Airways (India) Limited, Inter Globe Aviation Limited and Spice Jet Limited contravened the provisions of the Act. It was found that these airlines acted in parallel in collusion in fixing fuel surcharge (FSC) rates. Such conduct resulted in indirectly determining the rates of air cargo transport in contravention of the provisions of section 3(1) read with section 3(3)(a) of the Act.

Accordingly, the Commission issued an order under section 27 of the Act imposing penalties of Rs.151.69 crore, Rs.63.74 crore and Rs.42.48 crore on Jet Airways (India) Limited, Inter Globe Aviation Limited and Spice Jet Limited respectively. It also directed them to cease and desist from the practices which were found anti-competitive. The

Commission did not impose any penalty on Air India Limited as its conduct was not found to be parallel with that of other Airlines. It also did not impose any penalty on Go Airlines (India) Limited as it had rented its cargo belly space to third party vendors with no control on any part of commercial/ economic aspects of cargo operations done by vendors, including imposition of FSC.

Cease and Desist Order issued against Sonipat Distributors (FMCG) Association

It was alleged by one, Mr. Ghansyam Das Vij that under the bye-laws of the Sonipat Distributors (FMCG) Association (the Association), it was mandatory for a distributor and retailer to become a member of the said association. No new stockist/ distributor could be appointed by drugs and pharmaceutical companies unless the person desirous of becoming a stockist/ distributor becomes a member of the said association and gets "No Objection Certificate" (NOC) from the Association. It was also incumbent for the manufacturing company to obtain an NOC from

the Association before appointing any distributor at Sonipat.

Based on the findings of the investigation and submissions of the parties, the Commission found impugned act/ conduct of the Association to be in contravention of the provisions of section 3(1) of the Act read with section 3(3)(b) and (c) thereof. It also found that the members of the Association by agreeing to such bye-laws have disturbed the forces of free trade and limited competition amongst the distributors of FMCG products in Sonipat. The requirement to obtain NOC by a newly appointed distributor before starting of business was also noted as creating entry barriers besides limiting and controlling the supply of services.

Accordingly, the Commission passed cease and desist order under section 27 of the Act against Sonipat Distributors (FMCG) Association, besides directing it to modify its bye-laws in light of the contraventions found and observations made in the order and to put in place, in letter and in spirit, a 'Competition Compliance Manual' to educate its members about the basic tenets of competition law principles.



spicejet

flying for everyone

SECTION 5 & 6 ORDERS

Combination between Thomas Cook (India) Limited and Kuoni Travel (India) Private Limited Approved

The Commission received a notice under sub-section (2) of section 6 of the Act from Thomas Cook (India) Limited (**Acquirer**) for acquisition of 100% shareholding of Kuoni Travel (India) Private Limited (**Target**).

The Acquirer, a public listed company incorporated under the Companies Act, 1956, is engaged in the business of travel and travel related financial services such as leisure travel, travel insurance, foreign exchange, business travels, including meetings, incentives, conferences and events (**MICE**), visa and passport services, etc. through its brands "Thomas Cook" and "TCI". The Target, a private limited company incorporated under the Companies Act, 1956, is also engaged in the provision of travel and travel related services in India through its brands namely, "Kuoni", "SOTC", "SITA" and "Distant Frontiers".

The Commission observed that the proposed combination relates to the travel industry in India and the parties are operating in the travel

services business which includes provision of all travel related services e.g. flights, hotel bookings, visa services, insurance, foreign exchange etc. Apart from offering individual travel services such as air tickets & hotel bookings, visa and passport services etc., the parties also offer package tours to outbound, inbound and domestic travelers. The Parties are also active in the provision of business travel services to corporates.

The Commission also observed that the travel services industry has several other players such as Cox & Kings, Makemytrip, Yatra, Kesari, Veena World, Cleartrip, Vacations Exotica (Balmer Laurie), TUI, American Express, Carlson Wagonlit, etc. which offer individual travel services as well as package tours to outbound, inbound and domestic travellers. It noted that the combined market shares of the parties are in the range of 0-10 percent both in the broader travel and travel related services market and in various segments within this broader market.

With regard to the vertical relationships, the Commission noted that Sterling Holiday Resorts (India) Limited, a subsidiary of the Acquirer, is engaged in the business of providing resort and hotel services which may be considered at different stage/level to the business of the Target. The proposed combination, however, does not raise vertical foreclosure concerns as there are a number of significant players providing resort and hotel services in India.

Considering the facts on record and the details provided in the notice given under sub-section (2) of section 6 of the Act and the assessment of the proposed combination having due regard to the factors stated in sub-section (4) of section 20 of the Act, the Commission was of the opinion that the proposed combination is not likely to have an appreciable adverse effect on competition in India and, therefore, approved the same under sub-section (1) of section 31 of the Act.

Combination between LANXESS Deutschland GmbH and Aramco Overseas Company B.V. Approved

The Commission received a notice under sub-section (2) of section 6 of the Act jointly given by LANXESS Deutschland GmbH (Lanxess) and Aramco Overseas Company B.V. (AOC) on

23rd October, 2015. The notice was given pursuant to an Investment Agreement (**IA**) entered into and between parties on 22nd September, 2015. The proposed combination relates to the

formation of a 50:50 joint venture (**JVC**) between Lanxess and AOC to which Lanxess would transfer its 'Rubber Business', i.e., the units engaged in the business of (a) Tire & Specialty Rubbers (**TSR**)

and (b) High Performance Elastomers (HPE).

Lanxess, incorporated in Germany, is a wholly owned subsidiary of Lanxess AG which is listed on the Frankfurt Stock Exchange. Both these entities are part of Lanxess group of companies which is mainly engaged in the business of developing, manufacturing and marketing of plastics, rubber, intermediates and specialty chemicals. Currently, Lanxess exports to India the synthetic rubbers proposed to be manufactured by JVC. AOC is a wholly owned subsidiary of Saudi Arabian Oil Company (SAOC) to which it provides support services such as logistics, IT, public relations, HR etc. SAOC is a private limited liability company wholly owned by the Kingdom of Saudi Arabia and is engaged in the exploration, production and marketing of

crude oil & gas and in the production and marketing of refined products.

It was submitted by the parties that Lanxess and AOC, their affiliates and entities controlled by them, are not engaged in production, distribution or trading of similar or identical or substitutable products either directly or indirectly, in India or worldwide.

The Commission observed that AOC through its sister companies or their respective affiliates is active in some upstream markets, i.e., inputs to some of the synthetic rubbers proposed to be manufactured and sold as part of the Rubber Business of JVC. However, market share of AOC through its sisters' companies and their respective affiliates, in all the upstream input markets was insignificant and all the said upstream markets were

characterised by the presence of a number of large competitors such as ExxonMobil, Equistar, Dow, Braskem, Ineos, etc. Further, all the downstream rubber markets appeared to be competitive with the presence of a large number of vertically integrated global players such as Sinopec, Petro China, KKPC, Goodyear, NkNk, Denka, DuPont etc. Accordingly, the vertical relationships emanating from the proposed combination were not likely to have any appreciable adverse effect on competition in India in any relevant market.

Considering the facts on record, details provided in the notice and assessment of the proposed combination having due regard to factors stated in sub-section (4) of section 20 of the Act, the Commission approved the proposed combination under sub-section (1) of section 31 of the Act.

Acquisition of The Leela, Goa by Ceres Hotels Private Ltd. Approved

Ceres Hotels Private Limited (Ceres) filed a notice under sub-section (2) of section 6 of the Act in relation to the proposed acquisition of The Leela, Goa (Target), a hotel owned by Hotel Leela venture Limited (HLVL), pursuant to the execution of a Business Transfer Agreement (BTA) signed among Ceres, HLVL and MetTube International Pte. Ltd. (Singapore) (MetTube) on 19th September 2015.

As per the notice, the acquisition of the Target was to be executed by way of a slump sale on a going concern basis. Besides the BTA,

other agreements that facilitate the proposed combination are Agreement to Sell, Promoter Undertaking and a proposed Hotel Operation and Management Services Agreement (HMA). It was noted that while the ownership of the Target was being transferred to Ceres, the operations of Leela would still be managed by HLVL under HMA. Further, HLVL had granted a sub license to Ceres to continue to use the brand name 'Leela'. The proposed combination falls under the purview of section 5(a) of the Act.

Target is a 5 Star Deluxe luxury hotel in Goa, India owned by HLVL which is a part of the Leela group of companies. HLVL is engaged in owning hotels, managing hotels and providing hospitality services. Currently, HLVL owns and operates six luxury hotels besides managing two other luxury hotels in India. Ceres, an indirect wholly owned subsidiary of Metdist S.A. Ceres and MetTube both belonging to the Metdist group of companies, is a special purpose vehicle incorporated for the purpose of the proposed combination. Being

a newly incorporated entity, it is not engaged in any business activities at present either within or outside India.

From the information provided in the notice, the Commission observed that neither Ceres itself nor any of its parent entities are engaged in the hospitality sector in India or overseas. Thus, there is

neither any horizontal overlap nor any vertical relationship between Ceres and HLVL.

Considering the facts on record and the details provided in the notice given under sub-section (2) of section 6 of the Act and assessment of the proposed combination on the basis of factors stated in sub-section (4) of

section 20 of the Act, the Commission was of the opinion that the proposed combination is not likely to have an appreciable adverse effect on competition in India and therefore, the Commission approved the same under sub-section (1) of section 31 of the Act.

Combination between Vidhi Research and Development LLP and Pfizer Limited Approved

The Commission received a notice on 21st October, 2015 under sub-section (2) of section 6 of the Act from Vidhi Research and Development LLP (Vidhi or the Acquirer). As per the Notice, the proposed combination relates to the acquisition of a formulations plant of Pfizer Limited (Pfizer) located at Thane District in Maharashtra by Vidhi. For the purpose of the proposed combination, Vidhi and Pfizer entered into a Business Transfer Agreement on 23rd September, 2015.

Vidhi is stated to be a limited

liability partnership incorporated in India. It has not started any operation from the date of its incorporation. Pfizer is a company registered in India and is stated to be engaged in manufacture and sale of pharmaceutical and consumer healthcare products in India. There have been no commercial operations (including R&D operations) at the said formulation plant of Pfizer since the year 2013. The partners of Vidhi and entities controlled by them do not hold any significant investments in the

pharmaceutical sector.

Considering the facts on record and the details provided in the notice given under sub-section (2) of section 6 of the Act and the assessment of the combination after considering the relevant factors mentioned in sub-section (4) of Section 20 of the Act, the Commission observed that the combination is not likely to have any appreciable adverse effect on competition in India and therefore, the Commission hereby approved the same under sub-section (1) of section 31 of the Act.

INVESTIGATIONS INITIATED

Alleged Conduct by Becton Dickinson India (P) Ltd. and Max Super Speciality Hospital

It was alleged in the information filed by Mr. Vivek Sharma that the Max Super Specialty Hospital (Max Hospital) was charging a higher MRP for a Disposable Syringe (DS) manufactured by Becton Dickinson India (P) Ltd. (Becton) compared to the MRP of the same product in the open market in contravention of the provisions of section 4 of the Act. The Commission found that there existed a prima facie case and, therefore, vide its order dated 17th November, 2015, directed the Director General to investigate into the matter.

The Commission observed that

Max Hospital is providing healthcare services in super specialty category which can be distinguished from the general/ordinary healthcare services provided by non-super specialty hospitals in Delhi. Thus, the market for "provision of healthcare services by super specialty hospitals in Delhi" is considered as the relevant market in the instant case and in the said relevant market, Max Hospital is considered as dominant because it has the ability to affect the patients/consumers and competitors in its favour and can act independently of the competitive forces operating

in the relevant market. In regard to the abusive conduct, the Commission found strength in the information that Max Hospital has charged a higher price, in terms of higher MRP, which is almost double the price of the same product available in the open market. Accordingly, the Commission found the conduct of Max Hospital in charging higher price, through printing higher MRP on DS in connivance with Becton, amounts to imposition of unfair price in sale of DS which is in violation of the provision of section 4(2)(a)(ii) of the Act.

DEVELOPMENTS IN OTHER JURISDICTIONS

AUSTRALIA

The Australian Competition and Consumer Commission (ACCC) re-authorized Virgin Australia (Virgin) and Etihad Airways (Etihad) to continue their existing international alliance in relation to air transport services between Australia and the Middle East until 30 December 2020. Virgin and Etihad had sought re-authorization of their existing international alliance which was initially authorized by the ACCC in February 2011. The ACCC noted that there is evidence to support the submission that the alliance has resulted in public benefits consistent with ACCC's 2011 assessment, and that it is likely to continue to do so into the future.

CANADA

Competition Bureau Canada found Toyo Tire & Rubber Co., Ltd. (Toyo) guilty of bid rigging for its participation in an international bid rigging conspiracy related to the supply of anti vibration components to Toyota Motor Corp. Ltd. (Toyota). Toyo was fined \$1.7 million. The Competition Bureau's investigation found that between June 2004 and August 2006, Toyo engaged in secret agreements with other suppliers, in response to requests for quotes issued by Toyota for certain Corolla, RAV 4 and Lexus 350 RX models.

UK

The Consumer and Markets Authority (CMA) has raised

concerns over upcoming legislation that would formally establish an independent oil and gas regulator in UK. CMA has written to Energy and Climate Change Secretary asking her department to consider possible competition risks arising from the proposed Energy Bill currently before the Parliament. The competition issues arising from the Energy Bill pertain to ensuring that the relationship between competition law and collaboration; and the powers and activities of the Oil and Gas Authority - don't give rise to risks of breaches of competition law or of anticompetitive information exchange.

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ENGAGING WITH THE WORLD



Mr. S. L. Bunker delivering a lecture at 4th BRICS International Competition Conference in Durban on 10th-13th November, 2015.

- (i) Mr. Ashok Chawla, Chairperson attended the meeting of the OECD Competition Committee and Global Forum on Competition during 26-30th October, 2015 in Paris, France.
- (ii) Mr. S. L. Bunker, Member participated in the 4th BRICS International Competition Conference during 10-13th November, 2015 at Durban, South Africa. During the conference, a joint statement acknowledging the role of dialogue in field of competition policy enforcement amongst the BRICS Competition Authorities was signed.
- (iii) Dr. Seema Gaur, Adviser participated in the 7th meeting of Working Group on Competition during 9th Regional Comprehensive Economic Partnership Trade Negotiation Committee from 12th – 16th October, 2015 at Busan, Korea.
- (iv) Ms. R. Bhama, Adviser attended Capacity Building Workshop by UNDP on using Competition Law to promote Access to Health Technologies Pilots in selected Middle Income Countries during 29th -31st October, 2015 at Cape Town, South Africa.
- (v) Mr. Anshuman Pattanaik, Additional Director General and Mr. B. Naveen Kumar, Deputy Director participated in Seminar on "Effective Tools for Combating Cartels and Abuse of Dominance" organized by Taiwan Fair Trade Commission during 6th –7th October, 2015 in Kuala Lumpur, Malaysia.
- (vi) Ms. Sayanti Chakrabarti, Deputy Director participated in the ICN Unilateral Conduct Workshop during 12-13th November, 2015 at Istanbul, Turkey.
- (vii) Mr. Kamal Sultanpuri, Deputy Director and Ms. Savitri Baburao Kore, Deputy Director attended Economics Institute for Competition Enforcement Officials 15-20th November, 2015 at Hawaii, U.S.A.
- (viii) Mr. Rajender Kumar, Deputy Director, Ms. Bhavana Gulati, Deputy Director and Mr. Arun Dhall, Deputy Director, who are pursuing P.G. Diploma Course in Economics for Competition Law from Kings College London, attended weekend seminar during 21-22nd November, 2015 at London.

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Brazil

The Administrative Council for Economic Defence (CADE) granted conditional approval for merger between the world's largest beverage can manufacturers - Rexam and Ball Corporation. The merger would constitute the tie-up of the two biggest producers of metal cans for beverages in Brazil. In the post-merger scenario, the market shares of both companies would be significant in all country regions. In order to address competition concerns, the transaction's approval was conditioned to the divestiture of plants and tangible and intangible assets related to them.

Pakistan

Pakistan's competition authority has approved the merger of three Stock Exchanges (Islamabad, Lahore, and Karachi) into Pakistan Stock Exchange (PSE). The merger has been approved subject to the conditions that PSE will divest of 40% of its shares to a strategic investor within one year of the date of integration; that the sale of 20% of the shares of PSE to the public will also be carried out within the timelines specified, and that more than fifty-percent of the directors on the board of PSE shall be independent and shall be nominated/approved by Securities and Exchange Commission of Pakistan until the divestment is made to the strategic investor.

USA

The US Federal Trade Commission (FTC) has approved the final order in the case of the merger between Endo International Plc and Par Pharmaceuticals, Inc. The value of the deal had been estimated at approximately USD 8 billion. Under the order, Endo is required to sell its US rights and assets for generic glycopyrrolate tablets, and generic methimazole tablets to Rising Pharmaceuticals. The sale allows for the preservation of competition in the US markets for generic drugs to treat certain types of ulcers, and thyroid conditions.

ADVOCACY INITIATIVES

Advocacy Initiatives with Central/ State Governments and PSUs

- Mr. M.S. Sahoo, Member inaugurated the CCI-World Bank Workshop on “Competition Law and Public Procurement” held on Friday, the 9th October, 2015 at World Bank Office, Chennai. During the Workshop, Ms. R. Bhama, Adviser (Law) and Ms. Renuka Jain Gupta, Adviser (FA) conducted took sessions on ‘Introduction and Journey of Competition Law in India’ and ‘Competition Concerns in Public Procurement’.
- Mr. M. S. Sahoo, Member conducted advocacy interactions with Mr. S. Krishnan, Principal Secretary, Planning and Development and other senior officers of the Government of Tamil Nadu at Chennai on 9th October, 2015.
- Mr. Ashok Chawla, Chairperson chaired a technical session on “Regional & Remote Connectivity” during the International Civil Helicopters Conclave, 2015 at DRDO Bhawan, New Delhi on 16th October, 2015.
- Mr. M. S. Sahoo, Member delivered the lecture on “Companies Act, 2013 and Capital Markets” for officers of Ministry of Corporate Affairs for an appreciation of the linkages between company law and securities laws from competition perspective, on 16th October, 2015.
- Mr. Sudhir Mital, Member conducted an interactive session with senior officers of Government of Rajasthan at Jaipur on 20th October, 2015.



Mr. Ashok Chawla, Chairman, CCI delivered inaugural address at the Workshop on “Competition Law and Public Procurement in Lucknow at Bodhighar II, Indian Institute of Management, Lucknow on 28th November, 2015.

- Mr. Sudhir Mital, Member accompanied by Ms. Renuka Jain Gupta, Adviser (FA) conducted advocacy interactions with Secretary, Department of Chemicals and Petrochemicals and other senior officers of the Ministry at New Delhi on 15th October, 2015.



Mr. S. L. Bunker, Member, CCI addressing the gathering at a meeting of Executive Committee and Governing Council of CREDAI at Jaipur

- Mr. Sudhir Mital, Member conducted an interactive session with Secretary and senior officers of Government of Kerala at

Thiruvananthapuram on 30th October, 2015. Mr. Sukesh Mishra, Director (Law) accompanied the Member during the meeting.

- Mr. Sudhir Mital, Member accompanied by Ms. Renuka Jain Gupta, Adviser (FA) conducted advocacy interactions with Chief Secretary,



Mr. Sudhir Mital, Member, CCI delivered inaugural address at the seminar on "Competition Law Compliance by Enterprise at Kochi on 31st October, 2015 as the Chief Guest.

Government of Haryana at Chandigarh on 2nd November, 2015.

- Ms. Jyoti Jindgar, Adviser (Economics) conducted a session on Competition Aspects in Public Procurement in the Workshop organised by

CUTS International in association with Department of Finance, Government of Rajasthan at Jaipur on 30th November, 2015.

- Mr. Kaushal Kishore, Adviser (Economics) delivered a talk on Competition Policy and

PSUs during the Advanced Leadership Programme for senior and middle level executives from India's public sector companies, at IIPA, New Delhi on 14th December, 2015.

Advocacy Initiatives with Trade Associations

- Mr. M. S. Sahoo, Member delivered the inaugural address in the Seminar on "Making Competition Reforms work for People" organised by CUTS on 10th October 2015 at New Delhi.
- Mr. S. L. Bunker, Member and Mr. P. K. Singh, Adviser (Law) participated in the Session on Competition Law and Real Estate Sector, in Jaipur on 9-10th October, 2015 during the meeting of the Executive Committee and Governing Council of CREDAI.
- Mr. Sukesh Mishra, Director (Law) delivered a lecture during the National Training Workshop on 12th October, 2015, on Supply Chain Management and Warehousing of Essential Health Commodities for Central Medical Services Society.
- Mr. Ashok Chawla, Chairperson participated as Guest of Honour in the 95th Annual session of ASSOCHAM held on 24th November 2015, at Hotel Imperial, New Delhi.

Advocacy Initiatives with Universities / Institutes

- Mr. Ashok Chawla, Chairperson participated as the Chief Guest and inaugurated the ICSI Seminar on “Competition Law and Compliance” organised jointly by CCI and ICSI on 17th October, 2015 at New Delhi. Mr .M. S. Sahoo, Member, CCI chaired a technical session at the seminar. Ms. Smita Jhingran, Secretary, chaired the panel discussion during the event.
- Mr. M. S.Sahoo, Member delivered a lecture on “Cross checking: Competition Assessment of India’s Economic Laws” organised by the Centre for International Trade and Economic Laws (CITEL) of Jindal Global Law School at Sonapat, Haryana on 30th October, 2015.
- Mr. Sudhir Mital, Member inaugurated the seminar on “Competition Law Compliances by Enterprises” organised by the Institute of Company Secretaries of India at Kochi on 31st October, 2015. Mr. Sukesh Mishra, Director (Law) delivered a lecture on competition law.
- Dr. Sonali Garg, Director (Economics) delivered a talk on "Competition Law and IPR in India" on 17th November, 2015 in the Advanced Workshop-cum-Training on IP Management entitled “Identifying, Capturing, Protecting, Managing and Commercializing Innovations” at NAAS Complex, ICAR, Pusa Road, New Delhi



Mr. M. S. Sahoo, Member, CCI delivering inaugural address in the CCI World Bank advocacy event at Chennai

- Mr. Ashok Chawla, Chairperson delivered the Key Note Address during the Workshop on “Competition Law and Public Procurement” at Indian Institute of Management, Lucknow on 28th November, 2015.



Participants at the CCI World Bank advocacy event at Chennai

- Mr. Ashok Chawla, Chairperson participated as Speaker in the 1st India Conference on Innovation, Intellectual Property & Competition organised by IIM, Bangalore on 7th December, 2015.
- Ms. Jyoti Jindgar, Adviser and Ms. Sunaina Dutta, Deputy Director conducted a session of advocacy on Competition Law at Mumbai Office of SIDBI in Bandra Kurla Complex, Mumbai on 17th December, 2015.
- Mr. Ashok Chawla, Chairperson inaugurated the 43rd National Convention of Company Secretaries on “Make in India Innovate, Excel and

Grow” at Delhi on 19th December, 2015. Mr. M. S. Sahoo, Member, addressed the 4th technical session of the Convention.

Export Competition Pact of WTO

The WTO's 10th Ministerial Conference was held in Nairobi, Kenya, during 15 - 19 December, 2015. It culminated in the adoption of the "Nairobi Package". A center-piece of the Nairobi Package is a Ministerial Decision on Export Competition. A number of countries are currently using export subsidies to support agriculture exports. The legally-binding decision would eliminate these subsidies and prevent Governments from reverting to trade-distorting export support in the future.

India has asserted that there is little convergence of views among members of the global trade body on this issue and objected to any such pact without a permanent solution to farm subsidies. Further, developed countries which give huge trade distorting farm subsidies want emerging nations like India to take greater commitments in terms of reducing their export support. Export competition is one of the pillars of agriculture negotiations which are finely balanced on the three pillars of market access, export competition and domestic support. Dislocation of one pillar may upset the balance.

eBiz Project to enhance Ease of Doing Business

eBiz is one of the integrated services projects and part of the 27 Mission Mode Projects (MMPs) under the National E-Governance Plan (NEGP) of the Government of India. This Project consists of providing a Government to Business (G2B) portal to serve as a one-stop shop for delivery of services to the investors and address the needs of the business and industry from inception through the entire life cycle of the business. This project has been launched and under the 10 year program services are to be rolled out in a phased manner (Not clear?). Till now a total of 20 pan India services have been rolled out on the portal. A total of 5 States have been providing services through the platform. The project recently came in news when the Parliament

was informed in December 2015 that Government has proposed to integrate 50 services, including those from Central and State Governments, with the e-biz portal.

It is important to note that bureaucratic hassles and red-tapism are considered significant entry barrier in India. The project is expected to reduce and eliminate this barrier. As the project has direct bearing on ease of doing business and investment climate of the economy, the competition landscape is also expected to undergo a change. A spur to investment and easing up of starting business would intensify competition in the economy.

Major Overhaul in FDI Policy

In what may be called a major overhaul in the foreign direct investment (FDI) policy, the Government of India eased FDI norms in November 2015 across 15 sectors, including defence, civil aviation and broadcasting. A slew of measures were introduced with the aim to rationalise and simplify the process of foreign investments in the country including upward revision of the threshold limit for FDI approvals from the Foreign Investment Promotion Board (FIPB), introducing fungibility between different kinds of foreign investments, easing of FDI limits in some sectors, allowing foreign investment under the automatic route subject to caps in key sectors including defence, removing restrictions in sectors such as construction and single-brand retail, relaxing of sourcing norms for single-brand entities in case of the "state-of-art" and "cutting edge technology" etc. The measures are in consonance with the Government's commitment to improve the investment climate in India and encourage domestic and foreign investors to develop the country into a manufacturing and services hub.

The synergy between investment liberalisation and competition regulation is well-known. On the one hand, an effective competition law regime facilitates foreign investments by removing anti-competitive

entry obstacles and on the other hand, FDI can instill fresh competitive impulse in domestic markets both through green field ventures as well as through takeover and transformation of local enterprises. It is also incumbent upon the competition authority to ensure that cross-border mergers and acquisitions do not distort the competitive landscape of the relevant markets while competitively benign transactions are expeditiously approved through effective and efficient combination regulation. As the FDI regime in India gets progressively liberalised, the Competition Commission of India will play an increasingly important role in ensuring that the potential benefits of FDI are maximised for the consumers in India.

Anti-dumping Duty on Steel

Government of India, in December 2015, decided to impose Anti-Dumping Duty on Cold-Rolled Steel imports from China, the US, South Africa, Thailand, and Taiwan. The duty ranges between 5 percent and 57 percent and will be imposed on countries, including China, the US, South Africa, Thailand and Taiwan. The Government has already started levying anti-dumping duty from June 2015 on hot

rolled stainless steel items from China, Malaysia and Korea. It is likely to attract retaliatory measures from other countries either imposing import duty on similar products and/or other products. Either way, it is stifling for the healthy competitive environment in the countries involved. The Canadian International Trade Tribunal is already inquiring into the possible injury to the domestic steel industry of Canada.

These measures protect the domestic producers against the competitors from global markets, thus reducing the amount of competition in the relevant geographic market of India. The imported steel products are cheaper because of the lesser freight costs, and lesser interest rates in the exporting countries such as China. In addition, because of the high anti-dumping duty, the incentive to increase the efficiency among the domestic producers declines. The objective of CCI is to ensure fair competition in the relevant geographic market of India though the supply could be from anywhere in the world. Notwithstanding all the issues involved with the anti-dumping duties, the Government has taken the decisions in the larger economic interest of the nation.

JUDICIAL PRONOUNCEMENTS

FOR ANALYSIS AT PRIMA FACIE STAGE, THE COMMISSION CANNOT DELVE DEEP INTO THE MERITS OF THE ALLEGATIONS

The COMPAT set aside the order dated 11th February 2014 of the Commission in Case No. 95/2013 wherein it had refused to order an investigation into the alleged violation of the Act by certain PSU oil companies. The informant had alleged that contracts with oil companies, which are PSUs dealing with petroleum products, are grossly one-sided and imposing the same on the dealers is an abuse of dominant position by the respective companies. The Commission, in its order under section 26(2), concluded that although it appeared that collectively the oil companies had a dominant share with respect to refining capacity in comparison to private and joint ventures, however, none of the players in the relevant market was found to

be in a dominant position in '*market for refining and sale of petroleum products (Petrol/ HSD/ Motor Oil/ Grease etc.) in India*'.

The COMPAT observed that while examining information received under section 19, the Commission has only to satisfy itself whether or not there exists a prima facie case requiring an investigation. If the Commission finds that the averments contained in the information do not disclose any prima facie case, then only it can order closure of the matter. However, for that purpose the Commission cannot delve deep into the merits of the allegations, rely upon undisclosed material and record a finding on the tenability or otherwise of the allegations. It was also noted if in exercise of the appellate power

vested in it under section 53-B, the COMPAT is satisfied that the negative opinion formed by the Commission on the issue of existence of a prima facie case is vitiated by an error of law, then it can set aside the impugned order and direct an investigation under section 26(1) of the Act.

In this case, the COMPAT was of the opinion that the Commission did not undertake an exercise to find out whether the information and written submissions filed by the appellant along with documents disclose a prima facie case. Hence, the appeal was allowed and the impugned order was set aside and the case was remanded to the Commission for issue of a direction to the Director General under section 26(1) of the Act for conducting an

THE COMMISSION TO COMPLY WITH PRINCIPLES OF NATURAL JUSTICE IN EXERCISE OF ADJUDICATORY FUNCTIONS

The COMPAT by its order dated 11th December, 2015 set aside the order of the Commission in all appeals arising in cases RTPE 52/2006 and Case No 29/2010. The informant had alleged that Cement Manufacturer's Association and 11 cement manufacturers ('appellants') had formed a cartel and did not undertake production as per their installed capacity resulting in exorbitant rise in the price of cement affecting the public at large.

The Commission comprising the Chairperson and six other Members passed two orders (confidential version and non-confidential version) dated 20th June, 2012 and declared that the appellants have acted in violation of section 3(3)(a), 3(3)(b) read with section 3(1) and imposed a cumulative penalty of Rs.6,316.59 crore. All the pages of both the orders were initialed by the Chairperson and on the last pages of both the orders, the Chairperson and six other

Members appended their signatures without date(s). It was alleged by the appellants that the Chairperson who had signed the order had not heard the arguments in the case.

The COMPAT held that the signing of each page by the Chairperson is strongly indicative of the fact that the orders were authored by him and not by any of the six Members, who had heard the arguments on the three dates. While exercising

adjudicatory powers, all the Members and the Chairperson act as coordinators. If for any reason, the Chairperson is absent, then the senior most Member is required to preside over the meeting of the Commission.

The COMPAT was of the view that the argument that no prejudice has been caused to the appellants due to the participation of the Chairperson in the

decision-making process cannot be accepted. One does not know whether the remaining six Members would have reached a positive conclusion that the appellants are not guilty of violating sections 3(3)(a) and 3(3)(b) read with section 3(1) of the Act and/or they would not have imposed the particular penalty under section 27 of the Act. The principles of natural justice have been statutorily

engrafted in the scheme of the Act and the Commission is bound to comply with the same in the exercise of its adjudicatory functions.

The Commission was directed to hear the advocates/representatives of the appellants and Builders Association of India and pass fresh order in accordance with law within a period of three months.

THE COMMISSION TO ACT WITH CAUTION WHERE THE INFORMANT IS A THIRD PARTY OR A BUSY BODY

The COMPAT, vide its order dated 18th December, 2015 set aside the order of the Commission in case no. 39/2012. The informant alleged that Hiranandani Hospitals (appellant) was acting in contravention of the Act by insisting on availing stem cell banking services offered by Cyro banks only in their hospital. The majority order of the Commission (Chairperson and three Members) dated 5th February, 2014, held that the agreement entered into between the appellant and Cryo banks is anti-competitive being in contravention of section 3(1) of the Act as it has caused appreciable adverse effect on competition in the market of stem cell banking and imposed penalty of Rs.3,81,58,303. However, a Member, Ms. Geeta Gouri dissented and observed that the finding recorded by the Joint Director General on the issue of alleged dominant position enjoyed by the appellant in the

relevant market and abuse thereof was legally imperfect and held that there was no contravention of section 4 of the Act. She further observed that the agreement between the appellant and Cryobanks does not stop the latter from enrolling patients from other hospitals where it provides services. She then discussed various clauses of section 3(4) and held that the appellant did not violate section 3 of the Act.

The COMPAT observed that even though the Act does not prescribe any qualification to identify the locus of an informant, the Commission is expected to act with caution where the informant is a third party or a busy body, who may be espousing the cause of someone-else with an ulterior motive. The COMPAT held the view that while recording a finding that the appellant is guilty of violation of section 3, the Joint Director General and the

Commission completely overlooked that the agreement entered into between the appellant and Cryobanks did not, in any manner, restrict the choice of the service providers in the relevant market, i.e., market for stem cell banking. Thus the COMPAT was in complete agreement with the view expressed in the minority order.

The COMPAT also held that the view taken by the Commission on the interpretation of the term 'turnover' is contrary to the view expressed by the COMPAT in *Excel Corp Care Limited v. Competition Commission of India* as the Commission clubbed the revenue generated from all the services provided by the appellant hospital and accordingly imposed penalty. Thus COMPAT set aside the majority order and dismissed the information filed by the informant.

INVESTIGATION INTO THE VALIDITY OF BYE-LAWS OF AN ASSOCIATION BY THE JOINT DIRECTOR GENERAL WAS WITHOUT JURISDICTION

The COMPAT, vide its order dated 14th October, 2015, set aside the Commission's order in Case no. 56/2011 wherein it was concluded that Andhra Pradesh Film Chamber of Commerce (APFCC), Telangana Telugu Film Distributors Association and Karnataka Film Chamber of Commerce acted in violation of section 3(1) read with section 3(3) of the Act.

The Informant contended that it had acquired exclusive distribution rights of Hindi film "Mausam" and a few days before its release, a complaint was made by M/s Suresh Productions Pvt. Ltd. whose Director was the then President of the APFCC, alleging that payments were outstanding against the Informant in respect of another Hindi film and sought the associations help for recovery of its dues. As a result, the Honorary Secretary of another association, i.e, Telangana Telugu Film Distributors Association issued a circular directing its members not to release the film

'Mausam' in its territory unless the claim of its member M/s Suresh Production Pvt. Ltd. is not settled. Thus the Informant contended that APFCC along with other associations (collectively called 'Respondents') had formed a cartel with their distributor members and imposed undue restrictions against those who are not their members.

On 10th January, 2013, the Commission passed an order under section 27 and directed the Respondents to cease and desist from practices of pressurizing the distributors to settle the monetary disputes with its members and also directed APFCC to suitably modify their respective Articles of Association, rules and regulations and to remove the condition of compulsory registration of films as a pre-condition for release of any film. A penalty of Rs.12,89,735 was also imposed on APFCC by the Commission.

However, the COMPAT held that it was neither alleged by

Informant nor any evidence, oral or documentary was produced before the Joint Director General to show that APFCC had exchanged any communication (oral or documentary) with other Respondents in order to pressurise or compel the Informant to pay the alleged dues of M/s Suresh Productions Pvt. Ltd. as a condition precedent for the release of film 'Mausam'. The COMPAT also stated that the exercise undertaken by the Joint Director General to go into the validity of certain rules of the bye laws of APFCC was per se without jurisdiction as the Informant had not questioned the rules framed by APFCC on the ground that the same are *ultra vires* the provisions of the Act. Hence the Joint Director General ought not to have examined the Rules/Regulations of APFCC as it was per se without jurisdiction and the finding recorded by him on that issue, which has been approved by the Commission is liable to be declared in nullity.

TRAINING PROGRAMMES

- i. A comprehensive training programme on "Personal Effectiveness and Behavioral Skills" was organized in collaboration with Indian Institute of Public Administration (IIPA) during 28-29th October, 2015 for 20 officers of CCI.
- ii. One officer from CCI participated in the training programme on 'Stress Management' organized by ISTM during 5-8th October, 2015.
- iii. Presentation on 'e-Discovery & the Competition Act' was made by Juris Corp-Advocates & Solicitors for officers of CCI and of Office of the Director General on 23rd and 24th November, 2015 respectively.
- iv. 13th Distinguished Visitors Knowledge Series lecture was delivered by Dr. Leena Srivastava, Vice-Chancellor, TERI University on "Climate Change, Energy & Competition" on 27th November, 2015.
- v. As a part of Knowledge Management Initiative, the 4th research paper on the subject "Use of Screens in Ex-Officio Cartel Investigations: Options, Implications and Issues" was prepared.
- vi. As a part of CCI Internship Programme 17 students underwent internship at CCI.



A lecture is being delivered at 'Distinguish Visitor Knowledge Series'



Internship Programme during October, 2015

HR CORNER

- A vacancy circular to fill up 30 posts (11 professionals and 19 Support Staff) in CCI on direct recruitment basis was issued on 26th October, 2015.
- A vacancy circular to fill up one post each of Assistant Director (Corporate Services) and Assistant Director (Library Services) in CCI on deputation basis was issued on 26.10.2015.
- A DPC for promotion to the grades to Deputy Director (Corporate Services), Assistant Director (Corporate Services) and Assistant Director (Finance & Accounts) was held.
- A number of hospitals/ diagnostic centres on the panel of CGHS were empanelled on the panel of CCI for providing medical/ diagnostic facilities to the employees of the Commission at CGHS rates.

KNOW YOUR COMPETITION LAW

Composition of the Competition Commission of India

Chapter III of the Act deals with the establishment of the Competition Commission of India and its composition. Section 7 of the Act provides that the Commission shall be a body corporate by the name 'Competition Commission of India' having perpetual succession and a common seal with power, subject to the provisions of the Act, to acquire, hold and dispose of property, both movable and immovable, and to contract and shall, by the said name, sue or be sued. The Commission may establish offices at other places in India. At present, the Commission is operating out of New Delhi.

According to section 8 of the Act, the Commission shall consist of a Chairperson and not less than two and not more than six other Members to be appointed by the Central Government. Further, the Chairperson and every other Member shall be a person of ability, integrity and standing and who has special knowledge of, and such professional experience of not less than fifteen years in, international trade, economics, business, commerce, law, finance, accountancy, management, industry, public affairs or competition matters, including competition law and policy, which in the opinion of the Central Government, may be useful to the Commission. The Chairperson and the Members are whole-time Members.

The Chairperson and other

Members of the Commission are appointed by the Central Government from a panel of names recommended by a Selection Committee consisting of-

- a) the Chief Justice of India or his nominee - Chairperson;
- b) the Secretary in the Ministry of Corporate Affairs - Member;
- c) the Secretary in the Ministry of Law and Justice - Member;
- d) two experts of repute who have special knowledge of, and professional experience in international trade, economics, business, commerce, law, finance, accountancy, management, industry, public affairs or competition matters including - Members. competition law and policy.

Mr. Devender Kumar Sikri joined the Commission as its Chairperson on 11th January, 2016. The other members of the Commission are:

1. Mr. S.L. Bunker
2. Mr. Sudhir Mital
3. Mr. Augustine Peter
4. Mr. U. C. Nahta
5. Mr. M.S. Sahoo, and
6. Mr. Justice G.P. Mittal.

The Act provides that the Chairperson and every other Member shall hold office as such for a term of five years from the date on which he enters upon his office and shall be eligible for re-appointment. The Chairperson or

other Members shall not hold office as such after he has attained the age of sixty-five years. In the event of the occurrence of a vacancy in the office of the Chairperson by reason of his death, resignation or otherwise, the senior-most Member shall act as the Chairperson, until the date on which a new Chairperson, appointed in accordance with the provisions of this Act to fill such vacancy, enters upon his office.

It is also provided that the Central Government may, by notification, appoint a Director General and other such officers for the purposes of assisting the Commission in conducting inquiry into contravention of any of the provisions of this Act and for performing such other functions as are, or may be, provided by or under this Act. Section 17 provides that the Commission may appoint a Secretary and such officers and other employees as it considers necessary for the efficient performance of its functions under the Act. The Commission may engage, in accordance with the procedure specified by regulations, such number of experts and professionals of integrity and outstanding ability, who have special knowledge of, and experience in, economics, law, business or such other disciplines related to competition, as it deems necessary to assist the Commission in the discharge of its functions under the Act.

Devender Kumar Sikri - Chairperson

Mr. Devender Kumar Sikri, an officer of 1975 batch of Indian Administrative Service (IAS) took oath as Chairman of Competition Commission of India on 11th January 2016. He was sworn in by the Minister of Finance, I&B and Corporate Affairs, Mr. Arun Jaitley in the presence of Members and Secretary of the Competition Commission of India and officials of Ministry of Corporate Affairs. He replaces Shri Ashok Chawla, who demitted office on 7th January, 2016.

Mr. Sikri holds an M. Phil. Degree, a Masters Degree in Advanced Mathematics and has also done an Advance Professional Course in Public Administration from Indian Institute of Public Administration, Delhi.

Mr. Sikri has served in various important positions in the Central Government as well as in the State Government of Gujarat. In the Central Government, he held the position of Secretary, Department of Justice, Ministry of Law and Justice; Secretary, Ministry of Women and Child Development (WCD); Registrar General and Census Commissioner of India; Joint Secretary, Department of Fertilizers, among others. In the Central Government, as Secretary, Department of Justice he was instrumental in preparing and furthering the agenda of judicial reforms, including the changes in the existing procedure for appointment of Judges for greater transparency. As Secretary, Ministry of WCD, he was principal architect of the legislation on Protection of Children against Sexual Offences Act (POCSO), 2013, preparation of the Bill on Protection of Women against Sexual Harassment at Workplace Bill, 2010 and restructuring of Integrated Child Development Services Scheme. In his position as Registrar General and Census Commissioner of India, he was instrumental for guiding and release of data on various social and economic indicators for 2001 Census and preparation of complete framework for 2011 Census. In the State of Gujarat, he has been the Commissioner, Industries Promotion, Sales Tax Commissioner, besides being Vice-Chairman & Managing Director of Gujarat Industrial Development Corporation and Managing Director of Gujarat Agro Industries Corporation Ltd. He has been on the Board of several important companies like National Fertilizers Ltd., Rashtriya Chemicals & Fertilizers Ltd., Indian Farmers Fertilizer Co-op Ltd., Krishak Bharati Coop Ltd. and Fertilizers and Chemicals Travancore Ltd.

Competition Commission of India
The Hindustan Times House
18-20, Kasturba Gandhi Marg
New Delhi-110001

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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