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Fair competition
for greater good

Fair Play

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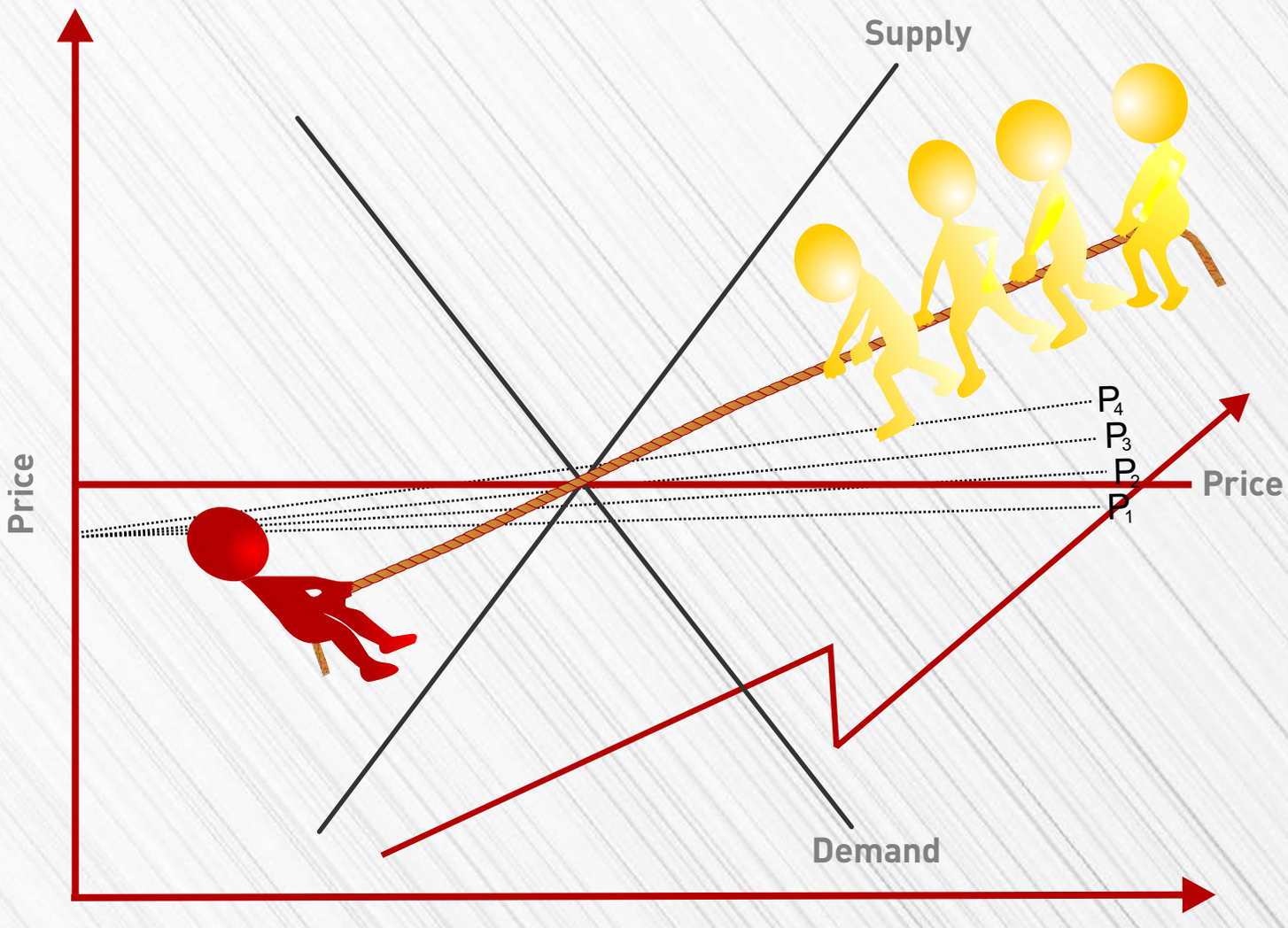

Resale Price Maintenance

In This Issue...

FROM THE DESK OF THE CHAIRPERSON

Price-fixing agreements are among the areas of utmost concern for competition authorities. While such agreements between competitors are condemned as the most egregious form of antitrust violation, robust debate surrounds the competitive effects and appropriate legal treatment of vertical pricing arrangements. In competition parlance, these are referred to as 'Resale Price Maintenance (RPM)'.

RPM, by which a manufacturer seeks to influence the pricing of its products by downstream distributors, generally reduces intra-brand price competition and is one such instrument that can potentially be used by manufacturers or dealers as part of an exclusionary and/or a collusive scheme. Owing to the well-established anticompetitive theories of harm, RPM merits antitrust scrutiny and, in fact, is deemed "inherently suspect" or a "hardcore restriction" in many jurisdictions.

On the other hand, economic literature is also replete with evidence of efficiencies emanating from vertical restraints in general and RPM in particular. The efficiency argument typically espoused is that RPM can help align manufacturer and dealer incentives thereby contributing to efficiencies in supply chains which in turn can be passed on to consumers.

A one-size-fits-all approach to RPM may, therefore, not be appropriate. Rather, the ambiguous effects of RPM augur well for a rule of reason standard that assesses competitive effects of such vertical price fixing agreements on a case-by-case basis.

The Indian competition law allows for an effect-based analysis of vertical restraints, including RPM, and does not deem such agreements to be illegal per se. The Competition Act, 2002 specifies a set of factors which the Commission should take into account when determining whether a RPM has an appreciable adverse effect on competition, including whether the agreement creates barriers or forecloses competition by creating impediments to entry or drives existing competitors out of the market. The Commission must also look into the possible pro-competitive effects of such agreements, viz., benefits to consumers, improvements in the production or distribution of goods or the provision of services, etc.

It thus remains both a challenge and an opportunity for the Commission to make effective use of the flexibility provided in the legal architecture and come down on RPM arrangements that actually harm competition while exonerating the ones that enhance efficiency.

Ashok Chawla

IN FOCUS

Resale Price Maintenance

In a typical micro-economic framework, a consumer compares the prices at which different retailers are offering a product and then buys from the retailer who offers it at the lowest price. This should invariably prompt the retailers to compete with one another in terms of price. However, it is not uncommon for retailers to refrain from competing on price. All of them may offer a product at the same price. This is often the outcome of a pricing strategy adopted by an upstream enterprise (manufacturer or supplier) and imposed on downstream enterprises (retailer or distributor). The retailers sell at the price set by the manufacturer to avoid supply disruptions. This is known as Retail Price Maintenance **(RPM)** in competition parlance.

RPM has many variants. There could be an understanding between upstream enterprises and downstream enterprises or among the downstream enterprises to sell a product at the same price. There could be a requirement to sell a product above a minimum price or sell it below a maximum price. Maximum RPM does not have much competition concern. RPM could take the form of fixation of distribution margin or the maximum level of discount from the price set by the manufacturer. It could be for products of the same brand or products across brands. Inter-brand RPM is more detrimental than intra-brand RPM. If inter-brand competition is weak, RPM can lead to market closure. In the context of service, it takes a unique manifestation. There are attempts by some agencies which regulate professions to fix prices for the services rendered by the professionals under their jurisdiction. This is most heinous as it attempts to sell non-standard products at the same price.

Economic rationale

There are supporters of RPM. They justify it to addresses the "free rider" problem.Suppose, there are two retailers X and Y selling the same product. X wishes to attract customers by providing a lovely environment and warm services at his retail outlet and spends a substantial amount to train his staff and create the environment. Y does not deem it necessary to incur such expenses. Naturally, it can offer the product at a lower price than X can. A typical consumer would take advantages offered by X, but at the price offered by Y. He would visit the outlet of X first and avail the knowledge of the product along with services like free demo, and then walk into the outlet of Y and purchase the product. Thus Y "free rides" on the efforts and expenses of X and benefits at the cost of X. This would discourage X from providing higher quality of services which come at a cost. A resultant downgrade in quality of services by all retailers would adversely affect the manufacturer and ultimately the consumer would be deprived of better services. Also, in some cases, a retailer makes efforts to develop a new market and once the market is developed, subsequent retailers "free ride" in that market. RPM can be a tool to safeguard such retailers who open new markets. It is also a tool for the manufacturer to avoid any dent to the image of the product and consequently its sales if the retailers engage in price race to the bottom.

Competition perspective

The protagonists of competition do not fully buy the economic rationale. The basic pillar of competition is that the invisible hands of the market, namely, demand for and supply of a product should determine its price. Every enterprise must be a price taker. In contrast, RPM robs the market of its soul by allowing determination of price by an enterprise or a group of enterprises in the product chain. RPM of the fixed and the minimum variety eliminates the intra-brand price competition among the retailers. It also reduces inter-brand competition by facilitating collusion among

manufacturers and/or retailers by bringing price transparency/stability into the competition dynamics. Minimum RPM can also lead to exclusion of more efficient manufacturer or retailer. At the manufacturer level, the dominant manufacturer can exclude the efficient rival by offering high RPM-induced mark ups to the retailers and incentivising them to push its own brand ahead of the more efficient rival. On the other hand, dominant retailers can exclude efficient rival retailers by forcing a minimum price level below which the rival cannot go. It is also argued that RPM increases the possibility of exploiting information gaps among consumers with respect to various products. This is due to the fact that the practice of RPM provides for the transfer of promotion of a brand from a manufacturer to a retailer and thereby reduces the level of scrutiny from national and other allied antitrust agencies.

However, there are strong arguments that vouch for RPM having pro-competitive outcomes. Besides addressing the "free rider" problem, it encourages the retailers to compete on non-price factors like quality of services, thus increasing intra-brand service competition. In the process, it reduces exhaustive specification and monitoring of retailer's performance by the manufacturer. For consumer's benefit, such a scenario would keep the high quality offering retailer in business and ensure continuance of existence of such services for consumers who value them. It can also lead to higher inter-brand competition as retailers would be incentivised to promote higher margin brands. It is also a tool for maintaining viable alternative channels of distribution in a scenario where a particular channel may have inherently lower cost structures.

Rule of reason

The practice of RPM has often been treated as a *per se* anti-trust violation along the lines of bid-rigging, price fixation, tie-in arrangements, etc. In 1911, the US Supreme Court held minimum RPM as indistinguishable in economic effect from horizontal price fixing by a cartel, thus being *per se* anti-competitive. However, in 2006, it held that RPM agreements should be judged under the rule of reason approach that looks at an agreement's actual effects on competition. The European Commission presumes that the RPM agreement has actual or likely negative effects. In 2003, it held the RPM agreements as *per se* illegal and also observed that dominance of the entity is not a mandatory condition for this purpose. The Indian law uses the rule of reason to determine the legality of RPM agreements. It puts onus on the Commission to determine whether these agreements cause or are likely to cause an appreciable adverse effect on competition in the relevant market in India and if found so, the same would be void. Every product and geographical market is a different story in itself and each RPM needs to be dealt with in the light of the facts and circumstances. It also needs to be ascertained as to whether the pro-competitive effects outweigh the anti-competitive effects.

SECTION 3 & 4 ORDERS

Kerala Film Exhibitors Federation and two of its Office Bearers penalised for their Anti-competitive Conduct

M/s Crown Theatre had informed the Commission that Kerala Film Exhibitors Federation (KFEF) indulged in anti-competitive conduct by not allowing screening of Malayalam and Tamil films in its theatres in Kerala since May, 2013.

Pursuant to the detailed investigation by the Director General (DG), the Commission found that the conduct of KFEF amounted to limiting and restricting the provision of Malayalam and Tamil films in the market in contravention of section 3(1) read with section 3(3)(b) of the Act. It found that the distributors denied screening of Malayalam and Tamil films to the Informant due to the ban imposed by KFEF on the Informant. It also found that two individuals, namely, Mr. P. V. Basheer Ahmed, President and Mr. M. C. Bobby, Secretary, who were office bearers of KEPF and responsible for the conduct of its business during the relevant period, were liable under section 48 of the Act.

The Commission noted that the conduct of KFEF and its aforesaid office bearers were subject to another investigation in a similar matter. It also noted that it has passed orders in similar matters against other film associations. Keeping these in view, the Commission: (a) imposed a penalty of Rs.82,414 on KFEF, Rs.56,397 on Mr. P. V. Basheer Ahmed and Rs.47,778 on Mr. M. C. Bobby; (b) directed KFEF and its office bearers to immediately cease and desist from anti-competitive conduct which was found to be indulging in contravention of section 3 of the Act; (c) directed KFEF not to associate Mr. P. V. Basheer Ahmed and Mr. M. C. Bobby with its affairs, including administration, management and governance, in any manner for a period of two years; and (d) directed KFEF to organize, in letter and spirit, at least five competition awareness and compliance programmes over next six months in the State of Kerala for its members.

Four General Insurance Companies penalised for Bid Rigging

The Commission had ordered a *suomoto* investigation against the four public sector general insurance companies, namely, National Insurance Co. Ltd., New India Assurance Co. Ltd., Oriental Insurance Co. Ltd. and United India Insurance Co. Ltd. pursuant to an anonymous complaint alleging contravention of the provisions of section 3 of the Act. It was alleged that these four insurance companies had formed a cartel for increasing the premium for Rashtriya Swasthya Bima Yojna (RSBY) of Government of Kerala.

After a detailed investigation by the DG, the Commission imposed a total penalty of Rs. 671.05 crore on the said four public sector insurance companies for manipulating the bidding process initiated by Government of Kerala for selecting insurance service provider for RSBY for the years 2010-11, 2011-12 and 2012-13. It noted that the impugned conduct of these companies resulted in manipulation of the bidding process in contravention of the provisions of section 3(1) read with section 3(3)(d) of the Act. It considered the bid rigging in public procurement for social welfare schemes, the beneficiaries of which were BPL and poor families, as an aggravating factor. Accordingly, it imposed penalties of Rs. 162.80 crore, Rs. 251.07 crore, Rs. 100.56 crore and Rs. 156.62 crore on National Insurance Co. Ltd., New India Assurance Co. Ltd., Oriental Insurance Co. Ltd. and United India Insurance Co. Ltd. respectively for the impugned conduct.

Combination between Nokia Corporation and Alcatel-Lucent S.A. approved

Nokia Corporation **(Nokia)** filed a notice for contemplated acquisition of sole control over Alcatel-Lucent S.A. **(Alcatel)** pursuant to execution of a Binding Memorandum of Understanding on 15th April 2015.

Nokia, a multinational company headquartered in Finland is organized into three business units, i.e., Nokia Networks, HERE, and Nokia Technologies. Nokia Networks provides hardware and software components for mobile and wireless networks and services to plan, implement, run and upgrade mobile operators' networks. HERE is active in the location intelligence industry. Nokia Technologies engages in R&D and develops and licenses technologies.

Alcatel is a public company incorporated as a Société Anonyme under the laws of France. Alcatel's business is primarily organized in two operating units, viz., Access and Core Networking. Access unit includes (i) Wireless, (ii) Fixed Access, (iii) Managed Services, and (iv) Licensing; and Core Networking unit includes (i) Internet Protocol (IP) Routing,(ii) IP Transport; and (iii) IP Platform.

The telecommunication equipment sector at the broader level may be classified into mobile infrastructure and fixed infrastructure. Mobile infrastructure equipment can be further grouped into technology generations, with each subsequent generation increasing both transmission capacity and technological capability. Network technology has evolved in response to the demand for increasingly data-intensive applications on wireless networks. Later generations of technology offer higher data transmission speed (i.e., throughput), greater spectral efficiency and capacity, and lower latency. Equipment generations can be generally classified into 2/2.5G, 3G, 4G, and 5G systems, with 5G in the early development phase. As regards the activities of parties to the combination in India, the Commission noted that while Nokia is present in the mobile infrastructure segment, Alcatel's India operations mainly relate to fixed line services, with some operations in the mobile infrastructure segment.

Based on market share analysis in the broader segment of mobile infrastructure equipment and in each sub-segment of mobile infrastructure equipment, the Commission noted that the incremental market shares resulting from the proposed combination are not substantial enough to cause appreciable adverse effect on competition in any of the segments or sub-segments of telecommunication infrastructure equipment.

The Commission also considered bidding data to assess competitiveness of the market, countervailing buyer power, and whether the combination would have the impact of elimination of a close competitor. It noted that most of the bids saw participation of a number of other competitors such as Ericsson, Huawei, and ZTE which have operations in all the segments. It also noted that the customers of mobile infrastructure equipment are large telecommunication players and due to, inter-alia, the presence of at least three major competitors of the parties, they would enjoy countervailing buyer power. The aspect of countervailing buyer power was also reflected in several instances of post bid negotiations with the successful bidder. The Commission further noted that Nokia and Alcatel do not appear to be close competitors in India considering the number of overlapping tenders participated by them.

Considering the facts on record and the details provided in the notice, the Commission approved the combination under sub-section (1) of Section 31 of the Act.

Combination between Future Retail Limited and Bharti Retail Limited approved

The Commission received a notice under sub-section (2) of Section 6 of the Act from Future Retail Limited **(FRL)** and Bharti Retail Limited **(BRL)** on 29th May 2015, pursuant to the execution of Implementation Agreement **(IA)** entered into and between them on 4th May 2015.

FRL is operating around 370 retail stores in various cities/towns in India under different brand names. The retail stores of FRL deal in grocery (including fruits and vegetables, staples etc.), general merchandise, consumer durables and IT, apparel & footwear, etc. BRL operates around 200 retail stores at various locations in India. The retail stores of BRL deal in apparel, home furnishings, appliances, mobile phones, meat shop, general merchandise, fruits and vegetables, among others.

The retail industry is generally divided into modern brick and mortar stores and traditional brick and mortar stores (also known as mom-and-pop stores). These categories are also referred to as being part of organised and unorganised retail, respectively. The stores of the parties fall in the category of modern brick and mortar stores.

The value of the overall retail industry in India was around Rs.31,00,000 crore in 2013-14. In the overall retail industry of India, the size of the organized retail was approximately 8 percent, i.e., around Rs. 2,48,000 crore. The key segments in the retail industry of India can be broadly categorized into food and groceries **(Groceries)**, footwear, pharmacy, home products, consumer durables & IT and apparel and others. Some of the major organized retail stores brand operating in India include Auchan, Big Bazaar, Reliance Fresh, More, Spencer, Star Bazaar, Heritage, Easy day, Spar and D-Mart, etc.

For combination cases involving retail stores, generally, information relating to the operations of the stores in terms of their catchment area, types of products dealt with at different stores, etc. are considered for competition assessment. It was noted from submission of the parties that the catchment area for Groceries was an area upto 5 kms **(Local area)** from the store, whereas in relation to product categories such as consumer durables & IT, General Merchandise, etc. the consumers are generally willing to travel longer distances. In terms of local area, parties had overlaps in 26 cities/towns, namely, Agra, Ambala, Amritsar, Bangalore, Barnala, Bareilly, Bhatinda, Bhiwadi, Bilaspur, Dehradun, Delhi, Faridkot, Ghaziabad, Gurgaon, Hubli, Jaipur, Jallandhar, Lucknow, Mangalore, Meerut, Muktsar, Nabha, Noida, Rudrapur, Tarantaran and Zirakpur.

Inn this regard, it was observed that many organized retail players are also present in overlapping cities/towns, in the Groceries and General Merchandise segments, apart from numerous unorganised retail stores.

With regard to the other categories, the Commission observed that there are a number of outlets selling products of various brands in all the other categories. Therefore, the commission was of the view that the consumers have ample choice in terms of number of options available to them for purchasing various products in the overlapping product categories.

As per the information provided in the notice, other documents on record and information available in the public domain, the Commission also observed that at the present stage of development of retail business in India, the unorganized retail business also exerts competitive constraint on the organized retail business.

With regards to the possibility of vertical foreclosure, the Commission observed that FRL and Future Consumer Enterprise Limited **(FCEL)**, in the past purchased food and beverages products from FieldFresh Foods Private Limited **(FFPL)** which is a joint venture between one of the Bharti Group entities and Del Monte Pacific Ltd. However, the said vertical arrangement would not raise any competition concerns in view of the insignificant presence of the FFPL in its areas of operations.

Considering the facts on record and 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 was 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.

Acquisition of Share Capital of Drive India Enterprise Solutions Limited approved

TVS Logistics Services Limited **(TVS LSL)**, Omega TC Holdings Pte Ltd. **(Omega)** and Tata Capital Financial Services Limited **(TCFSL)** jointly filed a notice for a combination entailing two interrelated and interdependent transactions. The proposed combination comprised of acquisition of the entire share capital of Drive India Enterprise Solutions Limited **(DIES'-L)** by TVS LSL (Acquisition 1) and subsequent acquisition of up to 13.03 percent of the equity share capital of TVS LSL by Omega and TCFSL **(Acquisition 2)**.

DIESL was a public unlisted company registered in India and was engaged in the provision of logistics services in India. TVS LSL is a public unlisted company registered in India and is part of the TVS group of companies. It is stated to be engaged in the business of provision of logistics services in India.

Omega, incorporated as a private limited company in Singapore, is an investment holding company. It is a subsidiary of Tata Opportunities Fund LP **(TOFLP)**, a private equity fund registered as a limited partnership under the laws of Singapore, and makes investments on behalf of TOF LP. TCFSL, a subsidiary of Tata Capital Limited **(TC'-L)**, is a systemically important non-deposit accepting, non-banking financial company **(NBFC)** and is registered with the Reserve Bank of India. It is engaged in the business of providing fund based and fee based financial services. Also, TOF LP is indirectly advised by TCL, the parent company of TCFSL.

It was noted that Acquisition 1 was a condition precedent for the consummation of Acquisition 2. Accordingly, Acquisition 1 and Acquisition 2 constituted a composite combination, and together referred to as the **'Proposed Combination'.**

It was observed that there was a horizontal overlap between the

activities of DIESL and TVS LSL in the market for provision of logistics services in India. However, the respective market shares of TVS LSL and DIESL were insignificant in the said business in India. In respect of Acquisition 2, it was submitted by the parties that neither Omega nor TCFSL, either directly or indirectly through their portfolio companies/subsidiaries, had any presence in the market for logistics services in India. Further, none of the portfolio companies/subsidiaries of TOF LP and TCL or the parent companies of Omega and TCFSL, respectively, was present in the business of logistics services, in India. Accordingly, it was noted that there were no horizontal overlaps between the parties in relation to Acquisition 2. The parties had submitted that some of the entities belonging to Tata Sons group were engaged in the business of logistics services. However, the market share of the said entities, in the provision of logistics services in India, was insignificant.

With regard to the vertical relationships, the parties had submitted that there were no vertical arrangements between them in relation to Acquisition 1. There were also no vertical arrangements between TOF LP/Omega (and its portfolio companies) and TVS LSL in the market for logistics services in India. It was further stated by the parties that although TCFSL does not have any vertical arrangements with TVS LSL in the market for logistics services in India, but in its capacity as a NBFC, TCFSL had sanctioned and disbursed certain loan amount to TVS LSL. In this regard, it was noted that the said relationship on account of loan was marginal. It was further noted that some of the entities of TVS group had provided logistics services to the entities belonging to the Tata Sons group. However, the said vertical arrangements between Tata Sons group and TVS group were insignificant and

unlikely to raise any competition concern.

During the course of the assessment of the Proposed Combination, it was observed that the binding agreement, i.e., share purchase agreement, dated 22nd May 2015, executed between TVS LSL, DIESL and the shareholders of DIESL, namely, Tata Industries Limited and Tata International Limited, for the acquisition of the entire equity share capital of DIESL **(DIESL SP')**, imposed certain non-compete restrictions on the shareholders of DIESL **(DIESL Non-Compete)**. Accordingly, the parties were required to provide necessary clarification and justification in this regard. The parties made voluntary submission under regulation 19 of the Combination Regulations, whereby they stated that the duration of the DIESL Non-Compete would be reduced from a period of 5 years to 3 years through modification in the agreement. The Commission accepted the said modification offered by the parties under the provisions of sub-regulation (2) of Regulation 19 of the Combination Regulations and directed the parties to make necessary amendment(s) in the DIESL SPA, so as to incorporate the said modification and submit a copy of such amended agreement, along with all relevant documents.

In terms of Acquisition 2, which was pursuant to the execution of a Supplementary Investment Agreement between, *inter alios*, Omega, TCFSL, T V Sundaram Iyengar & Sons Private Limited (promoter of TVS LSL) and TVS LSL on 29th June 2015 *(Omega Investment Agreement)*, the Commission noted that Omega Investment Agreement contained certain non-compete obligations **(Omega Non-Compete)** cast upon the promoter company of TVS LSL, i.e., T.V Sundram Iyengar and Sons Private Limited **(Promoter)**. In this regard, it was submitted by the parties that the Omega Non-Compete would operate till Omega and TCFSL would continue to be investors in TVS LSL and hold certain percent of the share capital of TVS LSL. It was also submitted, inter alia, that the Omega Non-Compete is a commercial necessity to protect the value of Omega and TCFSL's investment in TVS LSL as TVS LSL has built and cultivated relationship with the customers over a period of time and the retention of these customers is essential to the commercial and business interests of TVS LSL.The Commission noted the submissions of the parties in this regard.

The Commission approved the combination under sub-section (1) of Section 31 of the Act.

INVESTIGATIONS INITIATED

Abusive Conduct by M/s. ANI Technologies Pvt. Ltd.

The Commission received information from Meru Travel Solutions Private Limited (MTSPL) alleging abuse of dominant position M/s ANI Technologies Pvt. Ltd. in the radio taxi service industry in the city of Bengaluru. The allegations pertained to predatory pricing by M/s ANI Technologies Pvt. Ltd. for running its radio taxis under the brand name 'OLA' at abysmally low prices and for offering unrealistic discounts to consumers.

The Commission noted that the facts and allegations raised in the information filed by MTSPL were similar to those made in Case No. 06 of 2015 which was filed by M/s Fast Track Call Cab Private Limited against the same radio taxi operator i.e., M/s ANI Technologies Pvt. Ltd. The Commission in the said case had already directed the DG to undertake detailed investigation vide its prima facie order dated 24th April, 2015. Therefore, the Commission clubbed this matter with the earlier case for the purpose of investigation.

DEVELOPMENTS IN OTHER JURISDICTIONS

Acquisition of Hospira by Pfizer

The Competition Bureau of Canada cleared the acquisition of Hospira by Pfizer on 14thAugust 2015. Pfizer's portfolio includes medicines and vaccines, as well as many well-known consumer health care products. Hospira's portfolio includes injectable drugs and infusion technologies.

As part of the consent decree, Pfizer agreed selling its Canadian assets related to injectable cytarabine products (used in treatment of blood cancers), injectable epirubicin products (used in treatment of cancerous tumour) and oral tablet methotrexate products (used in treatment of certain cancers, as well as severe psoriasis and arthritis), and Hospira agreed to sell its pipeline injectable voriconazole product (used in treatment of serious invasive fungal infections).

Merger of Reynolds American Inc. and Lorillard Inc.

USFTC granted final approval to the merger of tobacco companies, namely, Reynolds American Inc. and Lorillard Inc. The deal is estimated to be valued at US$ 27.4 billion.

Pursuant to the consent agreement, Reynolds will divest four cigarette brands: Winston, Kool, Salem, and Maverick to the Imperial Tobacco Group. It will also divest Lorillard's manufacturing facilities in Greensboro, North Carolina, and provide Imperial with the opportunity to hire most of the existing Lorillard management, staff, and salesforce. Imperial Tobacco Group is an international tobacco manufacturer with presence in approximately 70 countries, but a comparatively small presence in the United States.

Reynolds and Lorillard are the second and third-largest U.S. cigarette makers. Altria Group Inc., which sells Marlboro cigarettes, is the industry leader. It was estimated that subsequent to the merger, Reynolds and Altria would control approximately 90% of all US cigarette sales.

Probe into Fee Increase by Private Schools

The Competition Commission of Pakistan (CCP) has initiated a probe in the matter of possible anti-competitive behaviour of private schools. It was alleged that private schools were involved in increasing the school fees exorbitantly every year without any justification, particularly without any corresponding increase in quality of education. Through the investigation, CCP would enquire as to whether the sharp increase in the school fee is a result of anti-competitive practices such as cartelization or abuse of dominance.

Decision relating to Cement Cartel

Brazil's Administrative Council for Economic Defence (CADE) rejected the appeal of Cement companies and reinforced its decision on cement cartel. Last year, it had imposed a fine of 3.1 billion Brazilian Real (€849 million) on six companies, three associations and six Individuals.

CADE observed that the cement industry has seen dramatic concentration over the past two decades. The price of cement has risen by two-thirds over the past decade. CADE found in its investigation that accused cement companies were engaged in bid rigging, and a series of strategic takeovers and asset swaps. It ordered the cement companies to pay the fines within one month and to divest key cement plants and facilities with in one year.

ENGAGING WITH THE WORLD

Mr. M. S. Sahoo, Member, CCI at the meeting of the Heads of the BRICS competition authorities

1. Mr. Ashok Chawla, Chairperson, CCI participated in 7th United Nations Conference to review the Set of Multilaterally Agreed Equitable Principles and Rules for the Control for Restrictive Business Practices during 6th-10th July, 2015 in Geneva, Switzerland.
2. Ms. Smita Jhingran, Secretary, CCI participated in Meeting of RCEP Working Group on Competition during 4th-7th August, 2015 in Nay Pyi Taw, Myanmar.
3. The Commission published the first online BRICS Competition Newsletter on behalf of the BRICS Competition Authorities in August 2015. The Newsletter is intended to facilitate experience sharing of BRICS Competition Authorities in competition law and policies with other Competition Authorities and Multilateral Agencies. The newsletter covers the areas of competition law and policy, enforcement actions, merger review and advocacy initiatives in BRICS countries.
4. Mr. M. S. Sahoo, Member, CCI attended the Annual International Event (Russian Competition Day) and meeting with Heads of BRICS authorities during 21st-24th September, 2015 in Moscow, Russia

ADVOCACY INITIATIVES

Competition Assessment of Legislations

The invisible hands of the market, namely, demand for and supply of goods and services determine the optimum allocation of resources and prices in the economy under competitive conditions. However, these hands may occasionally fail to yield the optimum allocation, that is, the markets may fail. This usually happens on account of three concerns. First is the market characteristics such as information asymmetry or externalities which the enterprises may fail to handle appropriately. Second is the abuse of market power by an enterprise or a group of enterprises. State usually intervenes to address these two concerns. Third is the State intervention itself, which aim at addressing the two aforesaid concerns or pursuing some other public interest. The State intervenes in the market and the economy by (a) enacting legislations and subordinate legislations that define the contour of the freedom of economic agents and their rights and obligations, and (b) formulating economic policies relating to trade, commerce, industry, business, investment, disinvestment, fisc, taxation, IPR, procurement, etc. These interventions usually strengthen the invisible hands of the market and promote competitive neutrality as well as competition. However, despite best intentions and exercise of the best of the skills, care and due diligence, these may inadvertently carry potential to restrict the ability of economic agents to effectively compete at the market place. For example, these may limit the number or range of suppliers or limit the ability of suppliers to compete. It may even distort the competitive neutrality without having a corresponding justification.

The Commission is established with the objectives to prevent practices having adverse effect on competition, to promote and sustain competition in markets, to protect the interests of consumers and to ensure freedom of trade carried on by other participants in markets, in India, and for matters connected therewith or incidental thereto. It is mandated, inter alia, to (a) give opinion on a reference from Central Government or a State Government on possible effect on competition of a proposed policy, and (b) take suitable measures for the promotion of competition advocacy, creating awareness and imparting training about competition issues. In sync with its mandate and the role of competition in economic development, the Commission seeks to assess select economic legislations / bills from the perspective of competition and share the assessment with the associated stakeholders. It has framed the Competition Commission of India (Competition Assessment of Legislations and Bills) Guidelines, 2015 for this purpose. The guidelines are available at: http://www.cci.gov.in/sites/default/files/whats_newdocument/CA%20Guidelines08092015.pdf

The objective of these guidelines is to facilitate an objective and transparent assessment of select economic legislations enacted recently by Parliament or State Legislatures and also the economic bills pending or coming up before them in near future from competition perspective. Based on the assessment, the Commission would suggest, if necessary, appropriate modifications in the legislation or the bill, as the case may be, along with the reasons for the same from the competition perspective, to the relevant stakeholders, including Parliament / State Legislature, the Administrative Ministry or the Department of the Government which has piloted the legislation / bill, and the Standing / Select Committee of the Parliament / State Legislature that examines the bill. This would complement the proactive role of the Commission in preventing any provision inadvertently sneaking into law that may have potential appreciable adverse effect on competition.

Advocacy Initiatives with Central Government and PSUs

- Mr. M. S. Sahoo, Member, CCI participated in a panel discussion on Draft Insolvency Code being recommended by the Bankruptcy Legislative Reforms Committee on 1st August, 2015 at India International Centre, New Delhi.
- Mr. V. P. Mishra, Director (Law) delivered a lecture on IP and Competition Law in a training programme on "Intellectual Property Rights in Agriculture" organised by Indian Agriculture Research Institute in New Delhi on 20thAugust, 2015.
- Dr. Bidyadhar Majhi, Director (Economics) delivered a lecture on "Fighting Anti-Competitive Behaviour in Public Procurement – Legal Aspects & Strategies" in Indian Railways Institute of Logistics and Material Management (IRILMM) Seminar on Vigilance and Ethics in Public Procurement at New Delhi on 21st August, 2015.
- Mr. Sudhir Mital, Member, Mr. M. S. Sahoo, Member, and Ms. Renuka Jain Gupta, Adviser (FA) and Mr. Sulabh Rastogi, AD (Advocacy) had interaction with the Secretary Pharmaceuticals and other senior officers of the Department of Pharmaceuticals on 27.08.15.

- Mr. Sudhir Mital, Member, Mr. M. S. Sahoo, Member, Mr. P. K. Singh, Adviser (Law) and Ms.Renuka Jain Gupta, Adviser (FA) interacted with the Chairman and members of Railway Board and other senior officers of Ministry of Railways on 1st September, 2015.
- Dr. K. D. Singh, Dy. Director (Law) made two Presentations: one on "Overview of Competition Law" and the other on "Case Studies on Public Procurement" in an in-house Training Programme of Power Grid Corporation of India at Gurgaon during Sep 7 - 8, 2015.
- Mr. M. S. Sahoo, Member, and Ms. Renuka Jain Gupta, Adviser (FA) interacted with Secretary, Ministry of Civil Aviation and other senior officers of the Ministry on 8th September, 2015.
- Mr. Sudhir Mital, Member and Mr. M. S. Sahoo, Member interacted with Secretary, Ministry of Coal and other senior officers of the Ministry on 10th September 2015.
- Dr. Bidyadhar Majhi, Director (Economics) made presentations in an in-house training programme of Power Grid Corporation of India at Gurgaon during September 21-22, 2015.

Advocacy Initiatives with Trade Associations and Institutions

- Mr. Ashok Chawla, Chairperson, CCI inaugurated the 3rd International Conference on "Interface Between Intellectual Property & Competition Law: Invention, Growth & New Challenges organised by ASSOCHAM at New Delhi on 7th August, 2015as the Chief Guest and delivered the inaugural address.

Mr. Ashok Chawla, Chairperson, CCI delivering inaugural address at 3rd International Conference on "Interface between Competition Law and Intellectual Property Rights" in New Delhi.

Mr. Ashok Chawla, Chairperson, CCI delivering inaugural address at Conference on "Competition Law and Practice" in Mumbai.

Mr. P.K. Singh, Adviser, CCI participated in an interactive session on "Competition Law and its Impact on Industry" in Pune.

- Mr. Ashok Chawla, Chairperson, CCI inaugurated a Conference on "Competition Law and Practices" organised by Confederation of Indian Industry (CII) at Mumbai on 21st August 2015 and delivered the Inaugural Address. Ms. Archana Goyal Gulati, Adviser (FA) chaired one technical session at the event.
- Mr. P. K. Singh, Adviser (Law) delivered a lecture on competition law in a programme organised by FICCI in Pune on 27th August, 2015.
- Mr. M. S. Sahoo, Member, CCI delivered a lecture on Competition Issues in Securities Market at NSE, Mumbai on 4th September 2015.
- Ms. Renuka Jain Gupta, Adviser (FA) delivered a talk on competition law on 18th September 2015 in New Delhi at the International Conference on "Integrity Pact and Probity in Public Procurement", organised by Transparency International India

Advocacy Initiatives with Universities/Institutes

- Mr. M. S. Sahoo, Member, CCI inaugurated the National Conference on Competition Law Compliances by Enterprises, organised by ICSI at Kolkata on 20th July 2015. Mr.V. P. Mishra, Director (Law) delivered a talk on "Anti-competitive Agreements and Trade Associations" in a technical session of the conference.
- Mr. S. L. Bunker, Member, CCI delivered a talk as Guest of Honour at the National Seminar on Corporate Laws and Challenges, organised by Osmania University, Hyderabad on 26th July 2015 at Hyderabad.
- Mr. M. S. Sahoo, Member, CCI delivered the key note address at "Competition Law and Innovation" programme organised by National Law University, Delhi on 8th August 2015.
- Mr. Sukesh Mishra, Director (Law) delivered a lecture on "Competition Law in India – An Overview with Case Study" at Symbiosis Law School, NOIDA on 8th August 2015.

Shri M.S. Sahoo, Member, CCI addressing at National Conference on Competition Law Compliances by Enterprises.

- Dr. Satya Prakash, Adviser (Law) chaired a technical session on "NCLT Competition Law Compliance by Enterprises, Court Craft & Art of Advocacy" and made a Presentation on "Competition Law and its Compliance" during the 16th National Conference of Practising Company Secretaries organised by ICSI on 14th August 2015 at Kochi.
- Mr. M. S. Sahoo, Member, CCI participated in the panel discussion on "Recent Reforms such as Make in India, GST, FDI, Financial Inclusion & JAM Trinity, and Land Acquisition Bill" organised by International Management Institute , New Delhi on 23rdAugust, 2015.

Meeting of Eminent Persons Advisory Group (EPAG) in progress

ECO WATCH

- The Reserve Bank of India (RBI) recently granted 'in-principle' approval to 11 payments banks (on August 19, 2015) and 10 small finance banks (on September 15, 2015). The move initiates the process of propelling India's financial system to a differentiated banking regime, where each set of banks specialises in a niche segment. The payments banks are expected to accelerate the penetration of basic financial services among low-income consumers by leveraging technology, particularly mobile phones. The logical corollary is intensification of competition in retail banking as payment banks with their low-cost innovative services and no legacy constraints can compete for deposits in rural and semi-urban areas. This will also provide more choice to customers who can now choose among the banks depending on the facilities provided. RBI's plan to grant such licenses "on tap" will further encourage competition. On the other hand, by having small finance banks, India will now have a network of focused lenders extending 75 percent of the total credit to borrowers who qualify to be in the priority sector. Small finance banks will also have to ensure that 50% of their loan portfolio constitutes advances up to Rs.25 lakh. This is expected to provide a major impetus to financial inclusion and credit-expansion to unbanked areas and segments of the economy while also enhancing competition in the small-value loan market.

- In the first-ever merger of two regulators in India, Forward Markets Commission (FMC), the commodities regulatory body was merged with Securities and Exchange Board of India (SEBI), the security markets regulator, on September 28, 2015. Forward Contracts (Regulation) Act, 1952 (FCRA) was repealed paving the way for the merger. The convergence had been recommended by various committees including the Financial Sector Legislative Reforms Commission (FSLRC) to exploit economies of scale and soope and make the regulation of commodities market more effective.
- Abnormal increase in onion prices emerged as a major area of concern in recent months evoking strong reaction from the consumers, media and the government. The sudden price spike has been attributed primarily to unanticipated temporary supply shock and highly inelastic demand for onions. However, it has also brought to fore the need for addressing the structural inefficiencies in agricultural markets highlighted in the study on 'Competitive Assessment of Onion Markets in India done by the Institute for Social and Economic Change (ISEC) commissioned by the Competition Commission of India in 2012. The ISEC study, drawing from secondary data and a primary survey of mandis in Maharashtra and Karnataka, recommended reforms in the Agricultural Produce Market Committee (APMC) Act to remove entry barriers and avoid unfair practices, market manipulations and hoardings by the traders. The Central Government, in order to contain the prices of essential food items, has advised the State Governments to allow free movement of fruits and vegetables by delisting them from the APMC Act. Delisting of perishables will give the farmers freedom to sell their produce directly to processors, aggregators and traders outside the mandi. States have further been advised to allow establishment of "Kisan Mandis"/ Farmers markets where producers and Farmer Producer Organizations (FPOs) can directly market their produce to wholesalers, organized retailers and ordinary consumers. Such measures would contribute significantly towards achieving an efficient marketing system for perishables in the country.
- Surging steel imports have resulted in an imbalance between supply and demand of steel in India leading to a sharp drop in steel prices. In a bid to protect the domestic steel industry, Government of India imposed 20% safeguard duty on import of specific flat steel products for 200 days with effect from September 14, 2015. While such measures can provide temporary relief, the long-term interest of steel industry as well as the user industries can only be served when the competitiveness of domestic steel producers increases and they are in a position to survive enhanced competition from imports.

JUDICIAL PRONOUNCEMENTS

NO PETITION SHOULD BE FILED TO PUT PRESSURE ON REGULATORY BODIES

The Hon'bleHigh Court of Delhi recently held that a party cannot, by filing petitions in courts requesting expedited hearing of cases by the Commission, seek to put pressure on regulatory bodies and/or convey an impression to the regulatory bodies that because the High Court has asked them to consider, they are bound to find merit in the information of the petitioners.

The petitioners, on 31st August, 2015 had submitted information under Section 19(1) of the Act, 2002 alleging contraventions of provisions of the Act. On 14th September, 2015, they filed a petition seeking a direction to the Commission to hear the same without any further delay. The Hon'ble High Court found that the period from 31st August, 2015 to 13th September, 2015 does not appear to be such from which it can be said that the Commission has derelicted from performance of its duties. It was also highlighted that one cannot lose sight of fact that the Commission is in the nature of a regulatory body and it cannot initiate proceedings immediately without studying and analysing the information.

CLOSE PROXIMITY OF TRANSACTIONS DOES NOT MEAN INTERDEPENDENCE

The Hon'ble COMPAT set aside penalty imposed under section 43A of the Act by holding that close proximity of transactions is not sufficient to conclude that transactions are interdependent.

The Board of Directors of Thomas Cook Insurance Services (India) Limited (TCISIL), its subsidiary and Sterling Holiday Resorts (India) Limited (SHRI) passed resolutions on 7th February 2014 approving a composite two-step scheme whereby (a) the resorts and time share business of SHRIL would be transferred by way of a demerger from SHRIL to TCISIL (Demerger); and (b) SHRIL, with its residual business, will be amalgamated into TCIL (Amalgamation). A single notice was filed (Notice) for approval of the amalgamation under Section 6(2) of the Act and under Regulation 9(4) of the Competition Commission of India (Procedure in regard to the transaction of business relating to combinations) Regulations, 2011.

In the Notice, the partiesalso made reference to certain other transactions which according to them were exempt from the pre-merger notice requirement pursuant to notification S.O. 482(E) dated 4th March, 2011. One such transaction was acquisition by Thomas Cook of equity shares representing 9.93% of the equity share capital of SHRIL, through market purchases on the Bombay Stock Exchange Limited between February 10 and 12, 2014 (Market Purchas"). A separate resolution was passed by TCISIL Board of Directors on 7th February, 2014 authorizing the Market Purchase.

The Commission, vide order dated 5th March, 2014, granted approval to the proposed combination. However, in spite of agreeing that the appellants had made full disclosure of all the transactions, including the market purchase in the Notice, imposed a penalty of Rs.1 crore by observing that the scheme of combination and market purchase were interconnected and interdependent and there was an obligation to file separate application under section 6(2) of the Act in respect of the market purchase.

The Hon'ble COMPAT held that the mere fact that various transactions were executed in close proximity of the market purchases of the equity shares is not sufficient to deny the benefit of the exemption notification and that cannot be made the basis for taking the view that the appellants were duty bound to file separate notice under section 6(2) of the Act. According to the Hon'ble COMPAT, the implementation of the demerger/amalgamation was not dependent on the market purchase and *vice versa*. Therefore, the order of the Commission under section 43A of the Act was set aside and the penalty imposed on the appellants was quashed.

COMPAT MAY DIRECT AN INVESTIGATION

This appeal arose from Case no. 61/2013 where the Commission had passed order under Section 26(2). The appellant had alleged before the Commission that M/s Maharashtra State Power Generation Co. Ltd. (MAHAGENCO) was abusing its dominant position, by facilitating formation of a cartel by Respondent Nos. 3 to 5 and awarded contracts to them in violation of Section 3(3)(c) and (d) of the Act. In support of this assertion, the appellant relied upon the judgment dated 31.10.2006 passed by the Supreme Court in Civil Appeal No. 4613 of 2006 and order dated 19.12.2008 passed in Contempt Petition No. 245 of 2007 in Civil Appeal No. 4613 of 2006.By majority order, the Commission closed the case under Section 26(2) of the Act.

The Hon'ble COMPAT observed that the only limitation on the exercise of power under Section 26(1)is that the Commission should feel prima facie satisfied that there exists a prima facie case for ordering into the allegation of violation of Sections 3(1) or 4(1) of the Act. It further observed that if in exercise of the appellate power vested in it under Section 53B,it is satisfied that the negative opinion expressed by the Commission on the issue of existence of a prima facie case is vitiated by an error of law, then it may set aside the impugned order and direct an investigation under Section 26(1) of the Act. It was held that a conjoint reading of the main judgment and order passed in contempt petition makes it clear that the Supreme Court had, after taking cognizance of the notings recorded by senior functionaries of MAHGENCO recorded an unequivocal finding that Respondents 3 to 5 had formed a cartel. It noted that the subsequent allocation of liaison work to Respondent 3 to 5 despite the fact that the rates quoted by them were substantially similar strengthens the finding recorded by the Supreme Court that Respondents Nos. 3 to 5 had formed a cartel and driven out the competition and it can reasonably be said that the appellant had succeeded in making out a prima facie case and the Commission committed grave error by refusing to direct an investigation by the Director General. The Hon'ble COMPAT concluded that the view expressed by the majority of the Commission that no prima facie case is made out for directing an investigation under Section 26(1) suffered from a patent legal infirmity.

The Hon'ble COMPAT set aside the order of the Commission and directed the DG to conduct an investigation into the informant's allegations and submit a report to the Commission within three months.

TRAINING PROGRAMMES

1. A eight weeks training programme on "Theory and Application of Econometric Methods" was organized for officers of the Commission in collaboration with the Indian Econometric Society (TIES) which concluded on 4th July, 2015.
2. Workshop in collaboration with United States Federal Trade Commission (USFTC) on Merger was organized for officers of the Commission during 21st-23rd July, 2015.
3. Eleven officers attended Training on Parliamentary Processes and Procedures at Bureau of Parliamentary Studies and Training, New Delhi during 27th-29th July, 2015.
4. Two officers attended training program on Facilitation Skills at National Academy for Training & Research in Social Security, New Delhi during 27th-29th July, 2015.
5. Half day training on the use of SPSS software was organized for the officers of CCI on 31st July, 2015 and 10th September, 2015.
6. The Commission organized an exposure programme for DR Assistants of the Ministry of Corporate Affairs on 12th August, 2015.
7. Induction training was organized for Research Associates of the Commission on 13th, 17th and 18th August, 2015.

Training on Parliamentary Processes and Procedures organized by Bureau of Parliamentary Study and Training.

Workshop on Merger in collaboration US Federal Trade Commission (FTC).

HR CORNER

i. Justice G. P. Mittal joined the Commission as a Member on 9th July, 2015.

ii. Keeping in view the organizational needs of the Commission and sanctioned strength of posts, the organizational structure of various Divisions of the Commission was notified on 12th May, 2010. The said organizational structure was recently reviewed by the Commission and in pursuance of the decision of the Commission the revised organizational structure was notified on 18th September, 2015. The same was made effective with effect from 1st October, 2015.

iii. A total of seven officers joined CCI on deputation basis during the quarter. These included: Mr. Nitin Gupta joined as DG, CCI on 3rd September, 2015, Mr. Kaushal Kishore joined as Adviser (Economics) on 21st August, 2015 and Ms. Jyoti Jindgar joined as Adviser (Economics) on 8th September, 2015.

iv. A total of seven officers were relieved from the Commission during the quarter on completion of their deputation tenure. These included: Ms. Payal Malik, Adviser (Economics) and Mr. L. Raja Sekhar Reddy, DG.

v. Dr. Satya Prakash, Adviser (Law) joined as Joint Secretary, Ministry of Parliamentary Affairs.

vi. Mr. Ajay Goel, Joint Director (Law) retired from the services of the Commission on attaining the age of superannuation on 31st July 2015.

vii. 10 persons were engaged as Research Associate (09 in the field of Economics and 01 in the field of Law) to assist the Commission in the discharge of its functions under the Act.

Oath taking ceremony of Justice(Retd.) G.P. Mittal on his joining as Member, CCI.

Direction Issued under Section 26(1) of the Competition Act, 2002

1. The Commission may inquire into an allegation of anti-competitive agreement or abuse of dominant position either *suo-moto* or on receipt of information from any person or on statutory reference by Central or State Government or a statutory authority. On perusal of the matter, if the Commission is of the opinion that there exists a *prima facie* case, it shall direct the DG to cause an investigation to be made under sub-section (1) of section 26 of the Act. Upon the receipt of this direction under section 26(1), the DG commences investigation.

2. The Act is a new legislation and provisions relating to anticompetitive agreements (section 3) and abuse of dominance (section 4) came into effect on 20thMay, 2009. Since its inception in 2009, the concept and nature of direction under section 26(1) has evolved by virtue of the jurisprudence laid down in the judgments passed by various judicial fora.

3. **Prima Facie:** The term *prima facie* case was elucidated in *Karnataka Film Chamber of Commerce v. Kannada Grahakara Koota*[1] by the Hon'ble High Court of Karnataka. "Prima-facie case" with reference to sub-section (1) of section 26 of the Act means nothing more than that the Commission is satisfied that the case is not frivolous or vexatious and that there is a serious question to be investigated. It means that, "*a case which has proceeded upon sufficient proof to that stage, where it would support finding, if the evidence to the contrary is disregarded*". It means an arguable case and does not mean a foolproof case. In other words, a case which fairly needs an enquiry.

4. **Departmental proceeding:** A direction under section 26(1) after formation of a *prima facie* opinion is a direction *simpliciter* to cause an investigation into the matter. The Supreme Court in *CCI v. Steel Authority of India Limited*[2] held that issuance of such a direction, at the face of it, is an administrative direction to one of its own wings departmentally and is without entering upon any adjudicatory process. The Commission is required to perform *inquisitorial and regulatory* functions in order to form an opinion on the existence of a *prima facie* case under section 26(1) of the Act which is different from the *adjudicatory* function performed by it under section 26(2) of the Act. Therefore, the functioning of the Commission under section 26(1) is a mere fact finding enquiry which has no effect on the determination of the rights or obligations of the parties to the *lis*.

5. **Recording Reasons:** In consonance with the settled principles of administrative jurisprudence, the Commission is expected to record at least some reason even while forming a *prima facie* view. However, the reason which the Commission is expected to give while forming a *prima facie* view under section 26(1) of the Act is of a lesser degree than that required in an order under section 33 of the Act *(DLF Limited v. Additional DG, CCI)*[3]. However, when a case falls under the proviso to section 26(1), there is no necessity to record reasons all over again for the formation of an opinion. The formation of an opinion on the first information itself is sufficient. *(Hundai Motors v. CCI*[4]*)*

6. **Direction not appealable :** The Hon'ble Supreme Court in *CCI v. SAIL* also laid down that closure of the case under section 26(2) causes determination of rights and affects a party, i.e., the informant. Resultantly, this order has been specifically made appealable under section 53A of the Act. On the other hand, mere direction for investigation to one of the wings of the Commission is akin to a departmental proceeding which does not entail civil consequences for any person. This direction has

not been made specifically appealable under section 53A.

7. **Writ Jurisdiction under Article 226:** The Hon'ble Delhi High Court in *Google Inc v. CCI* also held that a petition under Article 226 of the Constitution would be maintainable against a direction of the Commission of investigation under section 26(1) particularly when the powers of investigations of the DG under the Act are far wider than the powers of investigation of the Police under the Code of Criminal Procedure, 1973. The Court further specified the grounds on which such petitions would be entertained such as where treating the allegations in the reference/information/complaint to be correct, still no case of contravention of section3(1) or section 4(1) of the Act would be made out or where the said allegations are absurd and inherently improbable or where there is an express legal bar to the institution and continuance of the investigation or where the information/reference/complaint is manifestly attended with mala fide and has been made/filed with ulterior motive or the like.

8. **Right of Review/Recall:** In *CCI v. SAIL*, the Hon'ble Supreme Court has laid down that neither any statutory duty is cast on the Commission to issue notice or grant hearing, nor any party can claim, as a matter of right, notice and/or hearing at the stage of formation of opinion by the Commission, in terms of section 26(1) of the Act. The Hon'ble Delhi High Court in *Google Inc. v. CCI*[5] held that the Commission has jurisdiction to recall/review direction under section 26(1) of the Act and it does not become *functus officio* upon passing an order under section 26(1). The Act does not provide any remedy to a person/enterprise, which without being afforded any opportunity, has by a direction under section 26(1) been ordered to be investigated into. However, the right to apply for review/recall will not be available in every case in which the Commission has ordered investigation without hearing the person against whom complaint is made and such power has to be exercised on the well-recognized parameters of the power of review / recall and without lengthy arguments and without the investigation already ordered being stalled indefinitely. It is for the Commission to decide whether to stall the investigation pending the review/recall application.

9. Thus, the orders and the judgments passed by the various judicial for a have elucidated the concept of a direction passed under Section 26(1) of the Act. This is a step in the right direction since the Act is a relatively new legislation and such pronouncements explain and bring clarity to its provisions.

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[1] *[2015]129SCL357(Kar)*
[2] *(2010)10SCC744*
[3] *W.P. (C) 22/2011, Delhi High Court Order dated 04.01.2011*
[4] *(2014)5MLJ267*
[5] *2015(150)DRJ192*

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