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**Directorate for Financial and Enterprise Affairs
COMPETITION COMMITTEE**

Annual Report on Competition Policy Developments in India

-- 2016 --

5-6 December 2017

This report is submitted by India to the Competition Committee FOR INFORMATION at its forthcoming meeting to be held on 5-6 December 2017.

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1. Executive Summary

1. The Competition Commission of India (CCI) is an autonomous body established in March, 2009 under the Competition Act, 2002 (“Act”). The Act prohibits anti-competitive agreements, abuse of dominant position by enterprises and regulates combinations (acquisition, acquiring of control and M&A), which cause or are likely to cause an appreciable adverse effect on competition within India.

2. In its eight years of existence, CCI has strived to build a culture of competition in the markets through antitrust enforcement and regular engagement with stakeholders. Though the Act was enacted in 2003, CCI got its enforcement powers in 2009, and since then up to March 31, 2017, it has received over 868 antitrust cases and disposed of 654 cases. The merger review provisions were enforced from 2011 after CCI (Procedure in regard to the transaction of Business relating to Combinations) Regulations, 2011 came into existence in May, 2011. CCI has, since then, cleared over 490 merger filings out of 506 filed till March 2017.

3. Additionally, with the help of advocacy initiatives, CCI has successfully accomplished a comprehensive degree of awareness among stakeholders regarding competition law and policy and to ensure competition compliance. With a dramatic shift in the economic development paradigm, CCI has constantly endeavoured to align the instrumentality of competition law with the current economic consensus. This success is largely based on a robust legal architecture and a commitment by economic regulators to support the goal of this new economic order through well-functioning markets.

4. CCI has undertaken simplification of filing requirements, streamline procedures and bring about greater transparency to the merger control proceedings. In March 2016, Government of India issued a notification to increase in the threshold of *De Minimus* Exemption from INR 2.5 billion to 3.5 billion (for assets) and from INR 7.5 billion to 10 billion (for turnover) for acquisitions. Further, in March 2017 Government of India increased the scope of *De Minimus* exemption to include Merger and Amalgamation as well. The commission received 108 combination filings in 2016, as against 127 in 2015. This is on account of the revision of *de Minimus* exemption in March 2016.

5. As part of the continuing policy of the Commission to engage with international forum and overseas competition agencies, Memorandum of Understanding was signed with various BRICS Competition Authorities in 2016. As a co-chair of the ICN Agency Effectiveness Working Group, the Commission led the project on “Competition Agency Staff Training Program”. The findings of the project were presented in the ICN Annual Conference 2017.

6. International Competition Network (ICN) has accepted the proposal of the CCI to host the next ICN Annual Conference at New Delhi during 21-23 March, 2018. In addition to being host of this event, CCI has been inducted as an ex-officio member of the steer in group of the ICN for a period of 3 Years.

2. Changes to Competition laws and policies, proposed or adopted

7. The Government of India issued a notification on 4th March, 2016 to increase thresholds of *De Minimis* Exemption for acquisitions to include enterprises whose control, shares, voting right or assets are being acquired have assets of not more than 3.5

billion in India or turnover of not more than INR 3.5 billion in India. Further, on 27th March, 2017 the scope of De Minimis exemption has been increased to include Merger and Amalgamation as well. Thus, the 2017 notification now exempts enterprises being party to any form of combination (i.e., acquisitions and mergers / amalgamations) where the value of assets being acquired, taken control of, merged or amalgamated is not more than 3.5 billion in India or turnover is not more than 10 billion for the provisions of Section 5 of the Competition Act. The notification extends the period of exemption in such cases for a period of 5 years from the date of publication of the notification (i.e. 27th March, 2017).

3. Enforcement of Competition Law and Policies

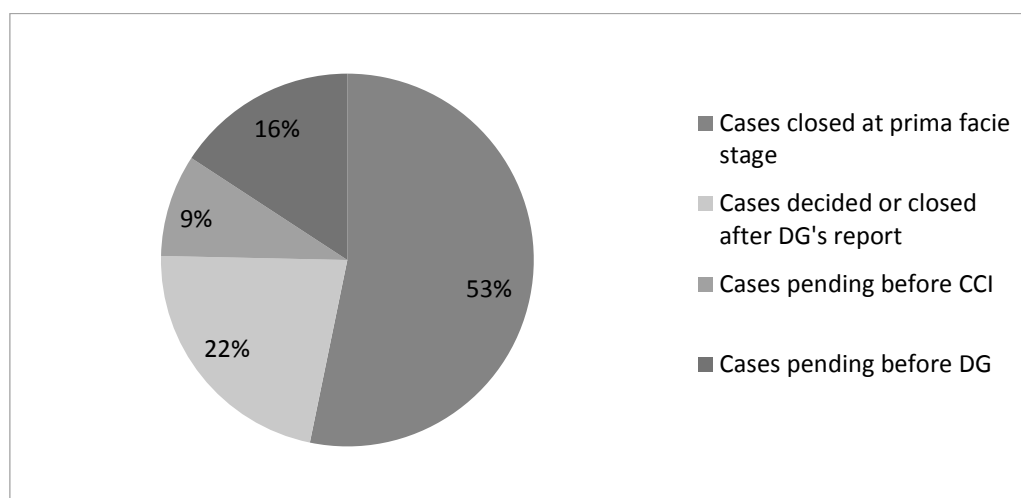
3.1. Action against anticompetitive practices, including agreements and abuses of dominant positions

8. Section 3 of the Act prohibits any agreement with respect to the production, supply, distribution, storage, and acquisition or control of goods or services, which causes or is likely to cause an appreciable adverse effect on competition within India. Section 4 of the Act prohibits the abuse of a dominant position by an enterprise or a group of enterprises. The Act defines a dominant position in terms of a position of strength enjoyed by an enterprise, in the relevant market in India, which enables it to: (i) operate independently of the competitive forces prevailing in the relevant market; or (ii) affect its competitors or consumers or the relevant market in its favour.

9. CCI has placed foremost priority on the effective disposal of cases. From the date of enforcement of Sections 3 and 4 of the Act, i.e., from May 20, 2009 to March 31, 2017, 868 cases were brought before CCI relating to enforcement of Section 3 and Section 4, of which a majority of cases have been disposed. The status update on competition enforcement in India till March 31, 2017 is presented below:

Table 1. Status of cases received till March 31, 2017

Cases closed at prima facie stage	462
Cases decided after DG's report	192
Cases pending before CCI	77
Cases pending before DG	137
Status as on 31/03/17	868

Figure 1. Status of cases received till March 31, 2017

3.2. Most Active Sectors in 2016-17

10. CCI has received 161 complaints in the Financial Year 2016-2017. In terms of allegations of anti-competitive conduct, the Automobiles sector has topped the list of complaints. Other prominent sectors with alleged anti-competitive conduct are the Financial Sector, Information & Broadcasting, Pharmaceuticals, and Automobiles. The sectorial distribution of cases relating to anti-competitive agreements and conduct reported to/noticed by CCI is presented in Table No. 2 below:

Table 2. Sector-wise Distribution of Information received (2016-17)

Sl. No.	Sector	2016-17
1	Real Estate	22
2	Financial Sector	3
3	I & B (Film/ Entertainment/TV/Print Media)	7
4	Health/Pharmaceuticals	7
5	Automobiles	72
6	Information Technology	5
7	Petroleum/Gas	2
8	Railways	3
9	Civil Aviation	0
10	Power	2
11	Chemicals & Fertilizers	0
12	Iron & Steel	0
13	Coal	4
14	Miscellaneous	34
	Total	161

3.3. Important decisions of CCI under Sections 3 and 4 of the Act in 2016-17

3.3.1. *M/s Maruti & Company vs. Karnataka Chemists & Druggists Association & Others (Case No. 71 of 2013)*

11. **Allegation:** The information was filed by M/s. Maruti & Co., Bangalore against Karnataka Chemists and Druggists Association (KCDA); Mr. K. E. Prakash, President of KCDA; the Regional Sales Manager/State Incharge, Lupin Diabetes Care Unit of Lupin Ltd. and Lupin Ltd, alleging that the Lupin denied supply of drugs to the informant for want of NOC from KCDA. CCI on finding a *prima facie* case under the provisions of Section 3 of the Act directed the DG to cause an investigation into the matter and submit a report.

12. **Finding:** After perusing the information, the investigation report submitted by the DG, replies and arguments of the parties and the material available on record, CCI observed that KCDA has contravened the provisions of Section 3(1) read with Section 3(3)(b) of the Act; also, that there was an anticompetitive arrangement/understanding between Lupin Ltd. and KCDA in violation of Section 3(1) of the Act. The office bearers of KCDA were also found liable u/s. 48 of the Act. *Lastly*, CCI also observed that Mr. Nishant Ajmera and Mr. Amit Kumar Dhiman are responsible and complicit for the anti-competitive conduct of Lupin Ltd. and hence, liable under Section 48(2) of the Act.

13. **Direction:** CCI vide its power u/s. 27 of the Act imposed penalty @10% of Average Income of KCDA; penalty @1% on the average turnover of Lupin Ltd.; and vide its power u/s. 48 of the Act imposed penalty @10% on the Income of office bearer of KCDA; penalty @1% of the average income on the officials of Lupin Ltd.

3.3.2. *Cartelization in respect of tenders floated by Indian Railways for supply of Brushless DC Fans and other electrical items (Suo-Moto Case No. 03/2014)*

14. **Allegation:** The matter was taken by CCI *suo-moto* based on the information received from the CBI, New Delhi that three firms had shared the market by way of allocation of tenders floated by Indian Railways for Brushless DC fans amongst themselves under an agreement/ arrangement and hence indulged in bid-rigging/ collusive bidding. CCI on finding a *prima facie* case under the provisions of Section 3 of the Act directed the DG to cause an investigation into the matter and submit a report.

15. **Finding:** After considering the DG investigation report and replies/ arguments submitted by the parties and the material available on record, CCI observed that the three firms had contravened the provisions of Sec. 3(1) r/w Sec. 3(3)(c) and 3(3)(d) of the Act.

16. **Direction:** CCI u/s 27(b) of the Act imposed the penalty @10% of the average income of the last three years was imposed on enterprises also involved in the matter. CCI granted a 75 per cent reduction in penalty to M/s. Pyramid Electronics under Section 46 of the Act, CCI also decided to allow the same reduction in penalty to Shri Sandeep Goyal for M/s. Pyramid Electronics under Section 46 of the Act. The total penalty imposed in the case by CCI was 2.48 crore. For the first time, CCI imposed lesser penalty in terms of section 46.

3.3.3. *In Re: Director, Supplies & Disposals, Haryana vs. Shree Cement Limited & Ors. (Ref. Case No. 05 of 2013)*

17. **Allegation:** According to the information received by CCI, it was alleged that all the seven cement companies have colluded together in applying for the tender floated by the Director, Supplies & Disposals, Haryana vide Notice Inviting Tender (NIT) [Tender No. 4/HR/RC/E-2/2012-13] for procurement of cement to be supplied to Government Departments/ Boards/ Corporations in the State of Haryana. CCI on finding a *prima facie* case under the provisions of Section 3 of the Act directed the DG to cause an investigation into the matter and submit a report.

18. **Finding:** After perusing the information, the investigation report submitted by the DG, replies and arguments of the parties and the material available on record, CCI observed that the cement companies, through their impugned conduct, have engaged in bid-rigging, in contravention of the provisions of Sec. 3(3)(d) r/w 3(1) of the Act due to which the market competition was reduced and the process of bid-rigging was manipulated.

19. **Direction:** CCI imposed the penalty @ 0.3 per cent of the average turnover of the cement companies for the preceding three years i.e. Rs. 18.44 crore, Rs. 68.30 crore, Rs. 38.02 crore, Rs. 9.26 crore, Rs. 29.84 crore, Rs. 35.32 crore and Rs. 6.55 crore upon Shree Cement Ltd., Ultra Tech Cement Ltd., Jaiprakash Associates Ltd., J.K. Cement Ltd., Ambuja Cements Ltd., ACC Ltd. and J.K. Lakshmi Cement Ltd. respectively. CCI also directed the parties to cease and desist from indulging in the practices which were found to be in contravention of the provisions of the Act.

3.3.4. *In Re: Maharashtra State Power Generation Company Ltd. and Mahanadi Coalfields Ltd. & other, In Re: Maharashtra State Power Generation Company Ltd. and Western Coalfields Ltd. & other, In Re: Gujarat State Electricity Corporation Limited and South Eastern Coalfields Ltd. & other (Case No(s). 3, 11, 59 of 2012)*

20. **Allegation:** The information was filed by Maharashtra State Power Generation Company Limited and Gujarat State Electricity Corporation Limited through different batches against Coal India Ltd. and its subsidiaries Mahanadi Coalfields Ltd., Western Coalfields Ltd., and South Eastern Coalfields Ltd. alleging contravention of Section 4 of the Act for imposing unfair/ discriminatory conditions in Fuel Supply Agreements (FSAs) with the power producers for supply of non-cooking coal. CCI on finding a *prima facie* case under the provisions of Section 4 of the Act directed the DG to cause an investigation into the matter and submit a report.

21. **Finding:** After perusing the information, the investigation report submitted by the DG, replies and arguments of the parties, the material available on record and the directions issued by the Competition Appellate Tribunal (COMPAT) for reconsideration of the matter while rejecting the earlier order passed by CCI imposing the penalty of Rs. 1773.05 crore upon Coal India Ltd., CCI observed that Coal India Ltd. through its subsidiaries operate independently of the market forces and enjoys dominance in the relevant market of production and supply of non-cooking coal in India and is in contravention of Section 4(2)(a)(i) of the Act.

22. **Direction:** While considering the steps taken by Coal India Ltd. in improving the sampling procedure post-passing of original order of CCI, CCI imposed the penalty of Rs.

591.01 crore upon Coal India Ltd. which is 1 per cent of the average turnover of the last preceding three years.

3.3.5. *In Re: Shri T. G. Vinayakumar (also known as Vinayan) vs. Association of Malayalam Movie Artists & others. (Case No. 98 of 2014)*

23. **Allegation:** The information was filed by Shri T. G. Vinayakumar alleging that Association of Malayalam Movie Artists; Film Employees Federation of Kerela; Shri Mammooty; Shri Mohanlal; Shri Dileep; FEFKA Director's Union; and FEFKA Production Executive's Union have contravened S. 3(3)(b) r/w S. 3(1) of the Act. CCI on finding a *prima facie* case under the provisions of Section 3 of the Act directed the DG to cause an investigation into the matter and submit a report.

24. **Finding:** After perusing the information, the investigation report submitted by the DG, replies and arguments of the parties, and, the material available on record, CCI observed that opposite parties 1, 2, 6 and 7 are guilty for the contravention of Section 3(1) read with Section 3(3)(b) of the Act. CCI also examined the evidence on record and found the office bearers identified by the DG to be responsible for the anti-competitive conduct of their respective associations' u/s. 48 of the Act.

25. **Direction:** CCI imposed penalty @ 5% on the average turnover of last three years on the opposite parties and CCI vide its power u/s. 48 imposed penalty @3% was imposed on the office bearers of the contravening opposite parties. The total penalty imposed in the case was Rs. 1,125,384/-

3.4. Enforcement of the Merger Regulation

26. The provisions of the Act for merger regulation of combinations were brought into effect on June 1, 2011. Sections 5 and 6 of the Act require mandatory notification to CCI of all acquisitions, mergers and amalgamations that exceed specified asset or turnover thresholds set out in the Competition Act (known as 'combinations'). A combination must be notified to CCI within prescribed timelines of execution of trigger documents/ events. A combination cannot be consummated until CCI give its approval or if 210 days have been passed from the date of the notice.

3.5. Statistics of merger filing to CCI

27. Till 31st March 2017, CCI has received 506 combination notices / cases, of which 490 cases have been disposed and 16 cases are pending.

28. Sector-wise distribution of combination notices received during the year has been presented in following table:

Table 3. Sector-wise distribution of Combination Notices Filed

Sl. No.	Sector	2016-17
1	Finance and Markets	12
2	Pharmaceuticals & Health Care	14
3	Information Technology and Services	6
4	PVC & Chemicals	3
5	Auto & Auto Components	8
6	Mining & Metals	3
7	Power & Power Generation	9
8	Media & Entertainment	4
9	Food & Refined Oil	6
10	Miscellaneous	40
	Total	105

3.6. Important orders of CCI under Sections 5 and 6 in 2016-17

3.6.1. Combination between Future Retail Limited and Heritage Foods Limited

29. On December 2, 2016, CCI received a notice given by Future Retail Limited (“FRL”). The proposed combination relates to the acquisition by FRL of Heritage Food Limited’s (HFL): (a) Small store retail business formats under the format name “Heritage Fresh” and “Heritage Mart” in the supermarket segment (“Retail Business”); (b) sourcing, processing and marketing fresh fruits and vegetables (“Agri Business”); and (c) Manufacture and supply of bakery products (“Bakery Business”).

30. FRL, a public listed company incorporated under the Companies Act, 1956 is engaged in the business of retail trading across India under different brand names, including Big Bazaar, FBB, Food Bazaar, Foodhall, Home Town, Easyday, and Ezone etc. HFL, a public listed company incorporated under the Companies Act, 1956, is engaged in the business of retail trading and operating retail stores across India. HFL’s business includes Retail Business, Agri Business, Bakery Business, dairy business, VetCa Undertaking and Renewable Energy.

31. CCI observed that the activities of the parties overlap in the retail sector in the cities of Bengaluru, Chennai and Hyderabad. However, the exact delineation of relevant market in the case of proposed combination was left open.

32. CCI observed that the Parties have overlaps in respect of several stores within the catchment area of 5kms in the three cities namely - Bengaluru, Chennai and Hyderabad. The Parties have submitted that there is presence of a number of: (i) brick and mortar stores (e.g. Greens Store, Nature Basket, More Mega Store, Spencer’s Stores etc.); (ii) local mom and pop stores; and (iii) online players like Grofers, Big Basket, ZopNow etc. which are providing competitive constraint to Parties. As regards the vertical relationships between the Parties, CCI noted that there are insignificant vertical arrangements that do not give rise to any competition concerns. In view of the above, CCI was of the opinion that the proposed combination is not likely to have an appreciable adverse effect on competition (AAEC) in India.

33. Accordingly, CCI approved the combination under sub-section (1) of Section 31 of the Act

3.6.2. Combination between MIH Internet SEA Pvt. Ltd and Make my trip Limited

34. CCI received a notice from MIH Internet SEA Pvt. Ltd (MIH Internet) regarding acquisition of 100 per cent of Ibibo Group Holdings (Singapore) Pte Ltd. (Ibibo) by Make my trip Limited (MMT) from MIH Internet and subsequent acquisition of 40 per cent stake in MMT by MIH Internet.

35. MIH Internet, an indirect subsidiary of Naspers Limited, is engaged in the business of investment holding and provision of administrative services to group / related companies. Ibibo is engaged primarily in e-commerce, web application solutions and internet related services and operates electronic platforms such as Goibibo.com, redbus.in, etc. MMT is primarily engaged in the business of selling travel products and solution in India, USA, Singapore, Malaysia, Thailand and the UAE through electronic platforms as well as physical stores. CCI observed that activities of the parties overlap in the provision of travel services in India, which can be availed through three alternative channels viz; (i) travel agencies; (ii) direct suppliers; and (iii) online travel aggregators (OTAs) and that most of these channels operate on a 'hybrid model' wherein a particular channel has both online as well as offline presence to cater to consumer preferences. Further, characteristics of products and services available with different travel channels are similar and therefore, substitutable from consumer's point of view. In view of the same, CCI identified the relevant product market as the market of 'sale of travel and travel related services'.

36. CCI noted that the combined market share of MMT and Ibibo is less than 11 per cent in the overall travel market as well as in narrower sub-segments of air, hotel and bus and car bookings in India. Further, there is presence of significant competitors not only in the overall market for travel products and services but also in sub-segments of air, hotel, bus and car bookings who would continue to pose significant competitive constraint, post-combination.

37. CCI also observed that there exists a vertical relationship between businesses of the parties as Naspers Group has a majority investment in PayU Global B.V. (PayU), an online payment service provider. From submission of the parties, CCI noted that PayU has a market share in the range of 15 to 20 per cent in the market for payment gateway services for online travel agencies and airlines and faces competition from players such as CCAvenue, Billdesk, Techprocess, ICIC, HDFC, Citi, etc. As a result, the said vertical relationship did not appear to cause any adverse effect on competition. Accordingly, CCI approved the combination under sub-section (1) of Section 31 of the Act

3.6.3. Acquisition of four brands of GlaxoSmithKline by Corona Remedies Private Limited

38. On January 27, 2017, CCI received a notice from Corona Remedies Private Limited (Corona) for acquisition of trademark and associated goodwill related to: (i) Stelbid and Vitneurin from Glaxo Group Limited (GGL); (ii) Dilo-BM and Dilo-DX from GlaxoSmithKline Pharmaceuticals Limited (GSKPL) (Corona, GGL and GSKPL collectively referred to as Parties).

39. Corona, a private limited company, is engaged in the business of manufacturing, trading and distributing pharmaceutical products. It does not have any subsidiary or affiliates in India. GSKPL, a listed public limited company, is engaged in the business of manufacturing, distributing and trading of pharmaceuticals. GSKPL product portfolio

includes prescription medicines and a range of vaccines for prevention of life threatening diseases. GGL, incorporated in United Kingdom, is the holding company of GSKPL. In India, it operates through its subsidiaries, which produces pharmaceuticals and other similar products.

40. CCI noted that there is no overlap among the Parties, on the basis of therapeutic groups at broader level and on the basis of APIs at the narrower level, except in respect of one of the target product i.e. ‘Dilo BM’ of GSKPL with ‘Respicure Syp’ of Corona. However, the exact delineation of relevant market in the case of proposed combination was left open.

41. CCI noted that both ‘Dilo BM’ and ‘Respicure Syp’ are expectorants covered under respiratory group and used in case of indications for the symptomatic relief of bronchospasm in bronchial asthma. The APIs used in Dilo BM Expectorant and Respicure Syp are ambroxol, guaiphenesin and terbutaline. CCI noted that the market share of the Corona and GSKPL in value terms, in the market of expectorants using ambroxol, guaiphenesin and terbutaline was about 1 per cent and 3 per cent during 2015. Further, CCI observed that the market is characterised by presence of other well established players like Centaur Pharmaceuticals, Blue Cross Laboratories, Zuventus Healthcare Ltd., Alembic Ltd. and Micro Labs Ltd. having significant market shares. In view of above, CCI did not find the horizontal overlap in the market to raise any appreciable adverse effect on competition. CCI also observed that no vertical relationship exists among the parties. Accordingly, CCI approved the acquisition under Section 31(1) of the Act.

3.6.4. Combination between Power and Energy International (Mauritius) Ltd and GMR Energy Limited

42. CCI received a notice from Power and Energy International (Mauritius) Ltd (PIL) regarding acquisition of 30 per cent of equity shares of GMR Energy Limited (GEL), a subsidiary of GMR Infrastructure Limited (GIL).

43. PIL, a wholly owned subsidiary of Tenaga Nasional Berhad (TNB), is incorporated in Mauritius and has certain investment holding activities in Mauritius. TNB is the largest electricity utility in Malaysia, and is primarily engaged in business of generation, transmission and distribution of power. GEL, in India, is engaged in the development, operation and maintenance of power projects, power generation, transmission, and captive coal mining for its plant in Chhattisgarh, both directly and indirectly, through its subsidiaries and has a portfolio of five operational power assets.

44. As PIL and TNB neither have any business presence nor any direct or indirect investments in India, there is no likelihood of appreciable adverse effect on competition due to absence of any horizontal overlap. Accordingly, CCI approved the combination under sub-section (1) of Section 31 of the Act.

45. CCI further observed that the Shareholding Agreement (SHA) contains non-compete covenant which provides that all shareholders of GEL, PIL and TNB, and their respective affiliates (as defined in the SHA) shall not, whilst remaining a shareholder of GEL, either alone or in conjunction with or on behalf of any other person: (a) establish, engage or be directly or indirectly interested in carrying on any business in India which is a ‘Relevant Business’ other than through GEL or an entity controlled by GEL; and (b) assist any other person in relation to the above activities. The ‘Relevant Business’ has been defined in the SHA as “development, ownership and operation of power projects;

power generation, transmission, distribution and trading of electricity in India; power generation for sale to off-takers in India; and captive mining for power plants in India". CCI noted that the aforesaid non-compete covenant, to the extent it relates to the scope of products/ services of the proposed combination, is beyond what is necessary for the implementation of the proposed combination and therefore not ancillary to the proposed combination.

3.6.5. CCI approves Acquisition of VCDs business of St. Jude's Medical, Inc. by Abbott Laboratories

46. Abbott Laboratories ("Abbott") filed a notice with CCI on 1 August, 2016 relating to its acquisition of the Vascular Closure Devices ("VCDs") business of St. Jude Medical, Inc. ("SJM"). (Hereinafter, Abbott and SJM are collectively referred to as "Parties".) The notice was filed pursuant to execution of an Agreement and Plan of Merger entered into between the Parties on 27 April 2016.

47. Abbott, a company incorporated and listed in the USA, is a global health care company and is engaged in research, development, manufacture and sale of a range of health care products on a global basis. Abbott's products and services relate to paediatric and adult nutrition, medical devices comprising vascular and diabetes care, optical products, diagnostic systems and branded generic pharmaceuticals. Of relevance to the proposed combination is VCDs which Abbott sells in India. VCDs are medical devices used to close holes in the artery that occurs due to catheterization during medical and diagnostic procedures to treat cardiovascular diseases. Abbott's VCDs are indicated for both 'small hole' and 'large hole' closure.

48. SJM, a company incorporated and listed in the USA, is a global medical device company that researches, develops, manufactures, and sells cardiovascular medical devices. It provides products and services, inter-alia, relating to cardiac rhythm management, heart failure, cardiovascular products, vascular closure devices and atrial fibrillation. SJM's VCDs are indicated for 'small hole' closure. CCI noted that the Parties' activities overlap in 'small hole' VCDs in India and that the combined market share of the Parties in India in 2015 in the 'small hole' VCDs as well as the individual hole sizes within 'small hole'

49. The other competitor i.e. Cardinal Health had an insignificant market share. Therefore, the proposed combination would enhance the merged entity's market power in the already highly concentrated market for 'small hole' VCDs in India.

50. In order to address the concerns emanating from the proposed combination, Parties have submitted a modification in the form of a plan of divestiture of the entire 'small hole' VCDs segment of SJM on a worldwide basis under Regulation 19(2) of CCI (Procedure in Regard to the Transaction of Business Relating to Combinations) Regulations, 2011. The proposed modification would remove the only overlap between Abbott and SJM in India, i.e. in 'small hole' VCDs and eliminate the competition concerns identified by CCI. CCI approved the proposed combination subject to subject to carrying out of the proposed modification.

3.6.6. Combination between NLC India Ltd. and Damodar Valley Corporation NLC India Ltd.

51. NLC India Ltd. ("NLC") and Damodar Valley Corporation ("DVC") jointly filed a combination notice for: (i) Incorporation of a joint venture company, namely, NLC

DVC Energy Limited (“JVC”) in which NLC would hold 74% shares and DVC would hold 26% shares; and (ii) Transfer of 2 x 600 MW power plant situated at Raghunathpur, West Bengal (“RTPS Plant”) to the JVC by DVC on slump sale as a going concern basis.

52. NLC, a Navaratna enterprise of the Government of India, was established in 1956 in Neyveli, Tamil Nadu and is engaged in mining of lignite coal and generation of power through lignite coal based thermal power plants. NLC has also commissioned a solar power plant and a wind power plant. DVC, headquartered in Kolkata, is a statutory corporation set up pursuant to the Damodar Valley Corporation Act, 1948 and operates several power stations in the Damodar valley of West Bengal and Jharkhand. DVC operates both thermal power stations and hydel power stations.

53. CCI observed that since the activities of the parties overlap in the generation of power (through coal) in India, the relevant product market may be taken as the business of power generation, although there exists a possibility of further segmenting the relevant product market into generation of power through various fuel-types. With respect to the relevant geographic market, CCI noted that the same may be country wide as power generation companies supply power to entities across various states. However, since the proposed combination is unlikely to cause any appreciable adverse effect on competition in India, CCI observed that the exact delineation of the relevant market, in terms of product and geography, may be left open.

54. CCI observed that the combined market share (on the basis of installed capacity) of NLC and DVC in power generation business in India is less than 5 percent and there is presence of significant competitors in the market, which would continue to provide competitive constraint to the parties, post combination

55. CCI also observed that there is no existing vertical relationship between the businesses of the parties in Indian or any of the party proposes to enter into any vertical arrangements in future in the market of generation of power with the other party or RTPS Plant. In view of the above, CCI approved the combination under sub-Section (1) of Section 31 of the Act.

4. Human Resources

56. CCI is headed by a Chairperson and six Members. Administrative functions of CCI are co-ordinated by the Secretariat, which is headed by the Secretary. The office of Director General (DG) investigates contravention of the provisions of the Act and is headed by the Director General.

57. In addition, there are eight divisions namely Advocacy, Anti-trust, Capacity Building, Combination, Economics, International Co-operation, Legal and Secretariat. Each division is steered by a senior officer of the level of Adviser and has a team of professionals from the field of economics, law and finance. The divisions assist CCI in fulfilment of its legal mandate. At present, about 168 (Professionals + Research Associates) staff members are in position.

5. International Co-operation

58. International co-operation is imperative in today’s globalised economy. It helps in exposure to best practices and provides support for capacity building as well as

knowledge sharing. Over the years, CCI has developed close linkages and networks with various multilateral agencies and competition jurisdictions for effective international co-operation including capacity building, enforcement co-operation and experience sharing. CCI formally and informally interacts with competition authorities of other jurisdictions on substantive issues, such as, assessment of combinations, market definition, common competition concerns and international remedies to mitigate competition issues.

59. CCI continues its endeavours to regularly engage with the other competition authorities and multilateral institutions such as OECD, UNCTAD and ICN. As a co-chair of the ICN Agency Effectiveness Working Group (AEWG), CCI took the lead of the project on “Competition Agency Staff Training Program. Objective of this project was to examine what agencies do to train their staff doing investigation. The findings was presented during 2017 ICN Annual Conference in Porto, Portugal

60. Recognising CCI’s growing stature in the world, ICN has accepted the proposal of CCI to host the 2018 ICN Annual Conference at New Delhi in March 2018. In addition to being host of this event, CCI has also been inducted as an ex-officio member of the Steering Group of the ICN for a period of 3 Years. Being a Steering Group member of ICN, CCI guides, reviews and approves the work plan of ICN. CCI co-chairs the Agency Effectiveness Working Group (AEWG) of ICN along with Finnish Competition and Consumer Authority, and Norwegian Competition Authority.

6. Memorandums or arrangements signed with agencies of foreign countries

61. As mandated under Section 18 of the Act, CCI has entered into Memoranda of Understanding (MOU), after obtaining approval from the Government of India, with the following competition authorities till March 2017:

- Federal Trade Commission (FTC) / Department of Justice (DOJ), USA,
- Director General Competition, European Union (EU),
- Federal Antimonopoly Service (FAS), Russia,
- Australian Competition and Consumer Commission (ACCC), and
- Competition Bureau (CB) Canada.
- Competition Authorities of the BRICS Countries

62. In the year 2016-17, CCI processed three MOUs i.e., MOU with Korea Fair Trade Commission (KFTC), Japan Fair Trade Commission (JFTC) and Administrative Council for Economic Defence (CADE) Brazil.

7. Details of events organised at CCI in collaboration with foreign Competition Authorities and multilateral agencies

7.1. Organization for Economic Co-operation and Development (OECD)

63. CCI has an observer status with the Competition Committee of OECD. Chairperson and Members of CCI regularly participate in the meetings of OECD Competition Committee and the OECD Global Competition Forum to get the exposure to the global best practices in the field of competition law and policy.

64. CCI has been making regular written contributions at various roundtables during the conferences/ meetings of OECD. In year 2015, CCI submitted papers on “Serial offenders: why some industries seem prone to endemic collusion”. One or two officers of CCI are regularly invited with financial support for participation in various competition related workshops/seminars organised by OCED- Korea Policy Centre (KPC). The discussions and deliberations at these conferences/ workshops help in capacity building of CCI. During 2016-17, officers of CCI have participated in following programs:

- One officer attended OECD /KPC Workshop on ‘Abuse of Dominance’ during 11-13 May, 2016 in Bali, Indonesia.
- Chairperson CCI attended OECD Competition Committee Meeting, 13-17 June, 2016 in Paris, France.
- Two officers attended OECD/KPC Competition Law Workshop on ‘Competition Rules and Financial Sector’ during 22-24 June, 2016 in Seoul, South Korea.
- CCI delegation comprising Chairperson, Secretary and two Joint Directors participated in OECD’s ‘Competition Committee meeting and Global Forum on Competition’ commenced from 28 November to 2 December 2016 in Paris, France.
- CCI also submitted written contributions on “Sanctions in Competition Cases” and the ‘Annual Report on Competition policy 2015’
- One officer attended OECD/KPC Workshop during 06-08 December, 2016 in Seoul, South Korea.

7.2. United Nations Conference on Trade and Development (UNCTAD)

65. CCI has been proactively engaging with various international organizations, including United Nations Conference on Trade and Development (UNCTAD). UNCTAD is a UN body which is responsible to deal with development issues, particularly international trade which is the main driver of development. CCI regularly participates in Intergovernmental Group of Expert (IGE) meeting every year. CCI’s engagement with UNCTAD in year 2015-16 is as follows:

- Chairperson along with one officer participated in UNCTAD meeting of IGE on Competition Law and Policy during 19 – 21 October, 2016 in Geneva, Switzerland.
- Written contribution on “Strengthening private sector capacity for competition compliance” was submitted to UNCTAD in October 2016.

7.3. International delegations received

66. In order to get exposure to best practices, CCI invites foreign delegates from mature jurisdictions to share their experiences in field of competition law and economics. In year 2016-17, CCI had organised workshops/ seminars in collaboration with Federal Trade Commission (FTC) & Department of Justice (DOJ) USA, DG Competition EU and OECD. Brief of these capacity building programs are mentioned below:

67. In pursuance of the MOU, officials from the US FTC & DOJ visited CCI to organize following meetings/workshops/ seminars:

- Meeting between the officials of US Embassy and International Co-operation Division, CCI was held on 1 June 2016 to discuss future co-operation between USFTC and CCI.

- Seminar on “Competition and Intellectual Property” in Collaboration with US DOJ at CCI on 22 August 2016. Resource Persons were Dr. Anupama Sawkar, Attorney Advisor (USDOJ) and Mr. John E. Dubiansky, Attorney Advisor (USFTC)
- Deputation of Mr. Jesse Bishop from USFTC who visited CCI for one month during 31 August, 2016 – 30 September 2016. The purpose of the visit was to provide technical assistance under MoU between CCI and USFTC.
- Workshop on “Cartel Enforcement” in collaboration with US DOJ at CCI during 28 -29 September, 2016 at CCI. Resource Persons were Ms. Tappan Brinkley and Ms. Kelley Molly from US DOJ.
- One officer from CCI sent on secondment to US FTC during 24 October- 30 November 2016.

68. The technical co-operation under the MOU with DG Competition is being implemented through Capacity Building Initiative for Trade and Development (CITD) program. The CITD program is executed with the help of resource persons from the competition authorities of EU member states. In the year 2016-17, following workshops have been organised at CCI with the help of EU resource persons:

- Specialised workshop on Anti-Competitive Conduct on 7 June 2016.
- Workshop on Economics Analysis in Competition Law Enforcement on 8 June, 2016
- Workshop on Advanced Topics in Competition Economics on 9 June 2016.
- As part of CITD foreign component, two officers sent on secondment to Competition and Markets Authority, UK and two officers to DG Competition, EU.

69. A bilateral meeting with Competition Bureau (CB) Canada was held on 13 January, 2017 at the office of CCI. CB was represented by Mr. John Pecman, Commissioner of Competition, CB Canada. Mr. Pecman gave a talk on “Competition Law in Canada” One officer from CCI has been sent on secondment to CB Canada from 06 March - 06 April, 2017 at Gatineau, Canada.

70. OECD has helped CCI to organize customised workshops as per the needs of CCI by bringing experts from all over the world. Following workshops/seminars have been organised at CCI in collaboration with OECD:

- A seminar on “Economics for non-economists” was organised on 8 February 2016;
- Training on Competition Assessment in collaboration with OECD was organised on 8 – 9 December, 2016 at IICA Manesar. It was attended by empanelled institutions and CCI’s officers.

8. Advocacy Initiatives

8.1. On-going Programmes

71. **Advocacy:** CCI has been engaging with various agencies which include trade/industry associations, industry chambers, autonomous institutions, professional institutes, viz., ICSI (The Institute of Company Secretaries of India), etc. for organising events/conferences/seminars/workshops/interactive meetings for creating awareness

among their constituent members so as to disseminate the virtues of the competition. In order to institutionalise dissemination of information, CCI is in the process of entering MOUs with professional institutions.

72. **Competition Assessment of Legislations:** CCI has undertaken the competition assessment of economic policies, legislations and bills. In this regard, 07 institutions have been empanelled to undertake the assessment process along with a few in-house officers. Additional institutes are also being empanelled.

73. **Focused Group Discussions (FGDs):** With the objective of developing an advocacy strategy so as to cover the areas of (a) knowledge, perception and attitudes about competition law and (b) communication and engagement with external stakeholders, CCI is conducting FGDs with the help of facilitators.

74. **Resource Person Scheme:** As a measure to promote competition advocacy, CCI is in the process of maintaining a panel of ‘Competition Resource Persons’, to organise competition advocacy programmes for groups of stakeholders, to supplement its own efforts on competition advocacy.

75. **Competition Compliance:** In order to enable enterprises to develop good corporate governance and to avoid severe penalties under the competition law, CCI is contemplating to build capacity of enterprises to put in place a sound competition compliance programme, which would help them in identifying the boundaries of permissible conduct and develop in-built alarm systems which would raise red flags in the event of possible transgression.

76. **Internship:** Under the internship programme, CCI imparts one month training to students from streams of economics, law, management and finance on competition and related issues. Besides, Ph. D. students are taken as intern for a longer duration of 6 Months.

9. Distinguished Visitor Knowledge Sharing Series

77. CCI also regularly invites distinguished speakers from various fields to address its employees. During the year 2016-17, Shri Bibek Debroy, Member, NITI Aayog, Dr. Pratap Bhanu Mehta, President & Chief Executive, Centre for Policy Research, Shri Arun Maira, Ex-Member, Planning Commission and Dr. Shyam Khemani, Ex-Chief, Canadian Competition Bureau and Ex-Advisor, Competition Policy, World Bank Group addressed the employees of CCI as part of the Distinguished/Special Visitors Knowledge Sharing (DVKS/SVKS) programmes

10. National Conference on Economics of Competition Law

78. In view of the increasingly important role that economics play in enforcement of competition law, CCI has instituted the ‘National Conference on Economics of Competition Law’ as an annual feature. The idea of hosting the Conference as an annual feature is to better integrate knowledge of economics and law in implementation of competition law. The Conference is organised every year on the first Thursday and Friday of March. The second edition of the Conference was organised on 2-3, March 2017. The Conference was inaugurated by Smt. Nirmala Sitharaman, Hon’ble Minister of State (Independent Charge) for Commerce & Industry, Government of India.