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**COMPETITION COMMITTEE**

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**Annual Report on Competition Policy Developments in India**

-- 2021 --

This report is submitted by India to the Competition Committee FOR INFORMATION.

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## *India*

### 1. Executive Summary

1. The Competition Commission of India (CCI/‘Commission’), established under the Competition Act, 2002 (‘Act’), got its enforcement and regulatory powers relating to antitrust provisions in 2009 and has completed more than a decade of successful enforcement of the law. CCI’s main policy objective is to sustain fair competition in the economy that will provide a level playing field to producers and make the markets work for the benefit of consumers.
2. This report focuses on the work carried out by CCI in 2020–21.

### 2. Changes to Competition Laws and Policies, Proposed or Adopted

#### 2.1. The Competition Commission of India (Procedure in regard to the transaction of business relating to combinations) Amendment Regulations, 2020

3. The Commission made an amendment to The Competition Commission of India (Procedure in regard to the transaction of business relating to combinations) Regulations, 2011. In Schedule II, in Form I, paragraph number 5.7, the description of the combination—“Non-compete obligation, if any: Duration, scope in terms of persons, product(s)/ service(s) and territory(ies) and corresponding justification”—has been omitted.
4. This amendment was made with a view to relax disclosure requirements regarding non-compete restrictions, entered into as a part of combinations. Parties to combination are no more required to give separate details regarding their non-compete restrictions, in the combination notice.

#### 2.2. The Competition Commission of India (Manner of Recovery of Monetary Penalty) Amendment Regulations, 2021

5. The Commission made an amendment to Regulation 3(3) and Forms – I and II appended to the *Competition Commission of India (Manner of Recovery of Monetary Penalty), Regulations, 2011* by substituting “Head No. 1475.00.105.05, Sub-Head – 05” – ‘Penalties imposed by Competition Commission of India’ with “Head No. 1475.00.105.05, Sub-Head – 00”.
6. Through the amendment, certain accounting head/sub-head has been substituted.

#### 2.3. The Competition Commission of India (Meeting for Transaction of Business) Amendment Regulations, 2021

7. The Commission made an amendment to The Competition Commission of India (Meeting for Transaction of Business) Regulations, 2009 by inserting the following regulation:

*“3A. Coram for meetings of Commission- (1) Subject to the provisions of Section 22 of the Act, the Commission shall set down cases for final hearing after*

*completion of pleadings and during such hearings, coram of the Commission would remain constant and such coram alone would continue to hear and participate in all subsequent proceedings on all hearing dates and would write the final orders. (2) If it becomes impossible to continue the hearings with the same coram, for any reason whatsoever, the matter would be heard afresh with new coram.”*

8. This amendment strengthens principles of law relating to hearing before the Commission.

### 3. Enforcement of Competition Laws and Policies

#### 3.1. Action against anti-competitive practices, including agreements and abuse of dominant position

9. 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 (AAEC) 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 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, consumers, or the relevant market in its favour.

#### 3.2. Most active sectors in 2020–21

10. CCI received 55 cases alleging contravention of antitrust provisions in 2020–21. The sectoral distribution of cases relating to anti-competitive agreements and abuse of dominance and conduct reported to/noticed by CCI is presented in Table 1.

**Table 1. Sector-wise distribution of Information received (2020–21)**

S. No.	Sector	2020–21
1	Real Estate	10
2	Automobiles	4
3	Information Technology	4
4	Railways	3
5	Financial Sector	2
6	Iron & Steel	2
7	Health/Pharmaceuticals	2
8	Coal	2
9	E-Commerce	2
10	I & B (Film/Entertainment/TV/Print Media)	1
11	Certification	1
12	Cement	1
13	Ball bearing/ Government Tenders	1
14	Dairy Products	1
15	Animal Husbandry	1
16	Regulatory Services	1
17	Road Sector	1
18	Paints	1
19	Ports	1

20	Building Material	1
21	Clothing/ Government Tenders	1
22	Agriculture (Seeds)	1
23	Beverages	1
24	Miscellaneous	10
	Total	55

### 3.3. Description of significant cases, including those with international implications

11. Nil

### 3.4. Important decisions of CCI under Sections 3 and 4 of the Act

#### 3.4.1. *In Re: Cartelisation in Industrial and Automotive Bearings (Suo Motu Case No. 05 of 2017)*

12. **Allegation:** This case was taken up *suo motu* by CCI based on disclosures made by Schaeffler India Ltd. ('Schaeffler') as a lesser penalty applicant, alleging that, when steel prices started increasing from 2009 onwards, five companies, namely, ABC Bearings Limited (now amalgamated with Timken India Limited) ('Timken'), National Engineering Industries Ltd. ('NEI'), Schaeffler India Ltd. (previously known as FAG Bearings India Ltd.), SKF India Ltd. ('SKF') and Tata Steel Ltd., Bearing Division ('Tata Bearings') co-ordinated prices with each other and passed on percentage increase in steel price to the automotive and industrial Original Equipment Manufacturer (OEM) customers and in the distribution segment of the market in order to seek a price increase from them. Such cartelisation existed from 2009 onwards till late 2014 and was confined only to the Indian market.

13. Based on the same, forming an opinion that a *prima facie* case of contravention of the provisions of Section 3 of the Act existed, CCI directed the Director General ('DG') to cause an investigation into the matter and submit a report. During pendency of investigation before the DG, NEI also approached CCI by filing an application seeking lesser penalty.

14. **Finding:** Based on the investigation report submitted by the DG, CCI concluded contravention of the provisions of the Act by NEI, Schaeffler, SKF, and Tata Bearings. However, no evidence of cartelisation was found against Timken or in the distribution segment of the market. Hence, CCI passed a final order dated 5<sup>th</sup> June 2020 under Section 27 of the Act, holding NEI, Schaeffler, SKF, and Tata Bearings guilty of indulging in cartelisation from 3<sup>rd</sup> November 2009 to 31<sup>st</sup> March 2011, in contravention of the provisions of Section 3(3)(a) read with Section 3(1) of the Act. Further, CCI also found 11 persons of these companies liable in terms of Section 48 of the Act for the anti-competitive conduct of their respective companies.

15. **Direction:** CCI passed a cease and desist order. However, considering the peculiar facts and circumstances of the case, no penalty was imposed on the contravening parties. Nonetheless, CCI cautioned them to ensure that their future conduct is strictly in accordance with the provisions of the Act, failing which, any such future behaviour would be viewed seriously, with attendant consequences.

16. For the detailed order of the Commission, please visit: <https://www.cci.gov.in/sites/default/files/05-of-2017.pdf>

**3.4.2. In Re: Chief Materials Manager, South Eastern Railway v. Hindustan Composites Limited and Others (Ref. Case No. 03 of 2016, Ref. Case No. 05 of 2016, Ref. Case No. 01 of 2018, Ref. Case No. 04 of 2018 and Ref. Case No. 08 of 2018)**

17. **Allegation:** CCI initiated this case based on a reference received from the Chief Materials Manager, South Eastern Railway ('Informant'), against Research Design and Standards Organisation (RDSO)-approved composite brake block vendors, alleging that identical bids were submitted by these vendors in the composite brake block (CBB) tenders floated by the Informant. Subsequently, similar Information(s) were received from other railway zones/departments.

18. **Finding:** The CCI, after forming an opinion that *prima facie* contravention of the provisions of Section 3(1) read with Section 3(3)(a) of the Act existed, referred the matter to the DG under Section 26(1) of the Act for causing an investigation. A composite investigation covering all tenders floated by all railway zones with respect to all types of composite brake blocks procured by them between 2009 and 2017 was conducted by DG. After analysing the evidence and material gathered by the DG, such as e-mails, SMSes, and WhatsApp communications, CCI concluded that the Opposite Parties (OPs) and their concerned office bearers/officials had indulged in cartelisation in the CBB market in India from 2009 till 2017 by means of directly or indirectly determining prices, allocating markets, co-ordinating bids, and manipulating the bidding process. Therefore, the parties were found to be in contravention of the provisions of Section 3(3) read with Section 3(1) of the Act.

19. **Direction:** Taking into account the co-operation extended by the parties during investigation, the fact that some of the OPs were Micro Small and Medium Enterprises (MSMEs), and the prevailing economic situation arising from the outbreak of COVID-19, CCI did not impose any monetary penalty and directed the parties and their concerned office bearers/officials to cease from such cartel behaviour and desist from indulging in similar behaviour in the future in terms of Section 27 of the Act.

20. For the detailed order of the Commission, please visit:  
<https://www.cci.gov.in/sites/default/files/03-of-2016.pdf>

**3.4.3. M/s International Subscription Agency v. Federation of Publishers' and Booksellers' Associations in India (Case No. 33 of 2019)**

21. **Allegation:** The case was initiated on the basis of an Information filed by M/s International Subscription Agency against the Federation of Publishers' and Booksellers' Associations in India (FPBAI), alleging that that the Good Offices Committee of FPBAI was forcing its members, who deal in print journals and e-resources, to not give discounts on publishers' prices to Indian subscribers beyond what had been prescribed by them. CCI, upon forming an opinion that *prima facie* contravention of the provisions of Section 3 of the Act existed, referred the matter to the DG for causing an investigation and submitting a report.

22. **Finding:** Based on the investigation report submitted by the DG, CCI passed a final order dated 23<sup>rd</sup> February 2021 under Section 27 of the Act, holding that the conduct of FPBAI whereby it was restricting discounts that may be offered by its member booksellers, publishers, and subscription agents to various institutional buyers in India amounted to

indirectly determining the sale prices of books, journals, etc., sold by its members in India, is in contravention of the provisions of Section 3(3)(a) read with Section 3(1) of the Act; and further holding that FPBAI, by directing its members, under the garb of issuance of 'advisories', to refrain from participating in certain procurement advertisements, had indirectly limited and controlled the supply of books, journals, etc. in the market for supply of books, e-resources and print journals in India, which is in contravention of the provisions of Section 3(3)(b) read with Section 3(1) of the Act.

23. **Direction:** Thus, CCI issued a cease and desist order as well as a penalty of Rs. 2 lakh (INR 0.2 million) on FPBAI and Rs. 1 lakh (INR 0.1 million) each on the present and former Presidents of FPBAI.

24. For the detailed order of the Commission, please visit:  
[https://www.cci.gov.in/sites/default/files/33-of-2019\\_0.pdf](https://www.cci.gov.in/sites/default/files/33-of-2019_0.pdf)

#### **3.4.4. In Re: People's All India Anti-Corruption and Crime Prevention Society v. Usha International Ltd. and Others (Case No. 90 of 2016)**

25. **Allegation:** The Information in the present case was filed by the People's All India Anti-Corruption and Crime Prevention Society under Section 19(1)(a) of the Act against Usha International Ltd., M/s Klassy Computers, M/s Nayan Agencies, M/s Jawahar Brothers, and Pune Zilla Parishad, alleging bid rigging in respect of tender floated by the Pune Zilla Parishad for procurement of Picofall-cum-Sewing Machine in the year 2015.

26. **Finding:** CCI concluded that quoting bid prices that were very close to each other, within the difference of just a few rupees, by the bidders for the Impugned Tender was not a mere coincidence but the result of a consensus/understanding amongst the bidders. CCI also noted that a holistic assessment of bid prices of the bidders, coupled with other factors, viz., single IP address, co-ordination in other tenders, call data record, mobile location, etc., was conclusive of an agreement amongst the bidders to fix price, resulting in rigging the bids in the Impugned Tender of the Pune Zilla Parishad. CCI also opined that such conduct in public procurements, besides defeating the tendering process, has an adverse impact on the exchequer.

27. **Direction:** CCI imposed a monetary penalty of Rs. 10 lakh (INR 1 million) each on the suppliers, i.e., M/s Klassy Computers, M/s Nayan Agencies and M/s Jawahar Brothers, for the anti-competitive conduct. Further, a penalty of Rs.10 thousand (INR 0.01 million) each was imposed on each of the concerned office bearers/officials of M/s Jawahar Brothers in terms of Section 48 of the Act. Additionally, a cease and desist order was issued against these suppliers.

28. For the detailed order of the Commission, please visit:  
<https://www.cci.gov.in/sites/default/files/90-of-2016.pdf>

#### **3.4.5. In Re: Alleged Cartelisation in the Airlines Industry (Suo Motu Case No. 03/2015)**

29. **Allegation:** The instant case emanated upon the receipt of a letter from the Lok Sabha Secretariat with a request to examine whether there is any evidence of cartelisation in the airlines sector. The CCI formed a *prima facie* view that a few airlines were exhibiting the characteristics of anti-competitive conduct in contravention of the provisions of Section 3(1) of the Act read with Section 3(3) thereof, and accordingly, directed the DG to cause an investigation into the matter.

30. **Finding:** The DG examined data pertaining to four major routes, viz., Delhi–Bombay–Delhi, Delhi–Bangalore–Delhi, Delhi–Hyderabad–Delhi, and Delhi–Pune–

Delhi, for the reference period, i.e., April 2012 to March 2014, and submitted the investigation report(s), concluding that no contravention of the provisions of the Section 3(1) of the Act read with Section 3(3) of the Act could be found against the airlines.

31. CCI, *inter alia*, observed that no pattern of stability or parallelism was noticed between the airlines; rather, a significant variance was seen in the market shares of the airlines. Further, CCI noted that a parallel conduct is actionable under the Act only when adaptation to the market conditions is attributable to information exchanged between the competitors; however, no exchange of communication between the airlines could be established. With regard to the bucket system, CCI observed that different airlines follow different bucket systems, and the number of seats allocated to each bucket depends on the time of day, day of week, and season. It was also found that airlines keep changing the price/inventory allocated to fare buckets due to changes in demand and competition price, which may happen multiple times a day. In respect of software programs, CCI held that all airlines use software programs to predict demand and assign seats to fare buckets, and although similar software are used by the four airlines for the purpose of revenue management, manual intervention plays a pivotal role in the determination of final prices.

32. **Direction:** CCI held that there is no evidence on record to establish cartel amongst airlines during the period April 2012 to March 2014 and ordered the matter to be closed under the provisions of Section 26(6) of the Act.

33. For the detailed order of the Commission, please visit:  
<https://www.cci.gov.in/sites/default/files/03-of-2015.pdf>

#### ***3.4.6. Indian Laminate Manufacturers Association v. Sachin Chemicals and Others. (Case No. 61 of 2016)***

34. **Allegation:** The Information was filed by the Indian Laminate Manufacturers Association under Section 19(1)(a) of the Act against Sachin Chemicals and Others alleging, *inter alia*, contravention of the provisions of Sections 3 and 4 of the Act. It was alleged that, by forming a cartel, the importers of phenol ‘artificially jacked up’. Phenol prices rose from around Rs. 60 per kg to almost double, i.e., around Rs. 115 per kg, during the period January 2016 to March 2016. It was stated that, due to the alleged cartelisation by phenol importers during this period, decorative laminate manufacturers were compelled to buy phenol at higher prices and, as a result, a few decorative laminate manufacturers were considering shutting down their businesses.

35. **Finding & Direction:** The Commission passed an order under Section 26(1) of the Act directing the DG to cause an investigation into the matter with respect to alleged contravention of provisions of Section 3 of the Act. Upon perusal of the investigation report of the DG, the Commission noted that there was no corroborative evidence of anti-competitive agreement or arrangement amongst the OPs investigated by the DG and there was a lack of material to show any collusion on the part of the OPs, and it could not be established that the importers have acted in contravention of the provisions of Section 3(3)(a) read with Section 3(1) of the Act.

36. For the detailed order of the Commission, please visit:  
<https://www.cci.gov.in/sites/default/files/61-of-2016.pdf>

#### ***3.4.7. International Spirits and Wines Association of India v. Uttarakhand Agricultural Produce Marketing Board (Case No. 02 of 2016)***

37. **Allegation:** The case was initiated based on an Information filed under the provisions of Section 19(1)(a) of the Act by International Spirits and Wines Association of



India against Uttarakhand Agricultural Produce Marketing Board ('Board') and its subsidiaries, Garhwal Mandal Vikas Nigam Ltd. and Kumaun Mandal Vikas Nigam Ltd., alleging contravention of the provisions of Section 4 of the Act.

38. The Information related to: (a) unfair and discriminatory conduct/practice of the Board and its subsidiaries in relation to the procurement of alcoholic beverages, which resulted in certain alcoholic manufactures (who are members of the Association) being denied market access for a large number of their brands; and (b) imposition of unfair terms and conditions in the agreements entered into between alcoholic beverage manufacturers and the Board, which adversely affected not only manufacturers but also retailers and consumers.

39. **Finding:** The investigation revealed that, as per Liquor Wholesale Order, the Board and its subsidiaries had enjoyed statutory monopsony/monopoly for the period between May 2015 to April 2016, during which the Board indulged in arbitrary and unfair procurement of Indian Made Foreign Liquor (IMFL). Despite the requirement of Liquor Wholesale Order and several communications from the Additional Excise Commissioner, the Board failed to maintain minimum stock levels of different brands of alcoholic beverages during a large part of the relevant period, thereby drastically affecting sales of certain brands of USL and Pernod. Accordingly, the investigation found that the conduct was in denial of market access in contravention of Section 4(2)(c) read with Section 4(2)(b)(i) of the Act. However, the investigation did not find anything against the subsidiaries.

40. The Commission noted that the arbitrary procurement by the Board led to some brands/players gaining undue advantage over others and harming the sales of certain manufacturers of IMFL, thereby distorting the competition. The arbitrary action led to a situation where the preferences/demand of the retailers and end consumers were not taken into account by the Board. The Board was not able to demonstrate any credible argument in favour of efficiency other than stating that the overall sales of IMFL increased. The Commission, therefore, held that the unilateral conduct impacted the inter-brand competition of the brands of IMFL being sold in the State of Uttarakhand, as the Board carried out procurement in a manner which adversely affected competition in the market and discriminated between different manufacturers and suppliers of IMFL.

41. **Direction:** The Commission found the conduct of limiting and restricting wholesale procurement and distribution of IMFL in the State of Uttarakhand and denial of market access to producers of certain brands of IMFL in the State of Uttarakhand to be in violation of Section 4(1) read with Section 4(2)(b)(i) and Section 4(2)(c) of the Act. Further, the Commission observed that the Board had inserted certain clauses in agreements entered into by it with members of the Association, USL, and Pernod, which were one-sided. The Commission decided to impose a penalty of Rs. 1 Crore (INR 10 million) on the Board under Section 27 of the Act.

42. For the detailed order of the Commission, please visit:  
<https://www.cci.gov.in/sites/default/files/02-of-2016.pdf>

### ***3.4.8. In Re: Gurgaon Institutional Welfare Association v. Haryana Urban Development Authority (HUDA) (Case No. 94 of 2016)***

43. **Allegation:** The case was filed by Gurgaon Institutional Welfare Association against Haryana Urban Development Authority (HUDA) alleging that HUDA imposed an *ex facie* illegal and void condition manipulating the terms and conditions of the allotment which was contrary to the statutory provisions, thereby restricting the rights of the allottees

to further sell, mortgage, and lease out the plots purchased and buildings constructed by them and abused its dominant position in contravention of Sections 4 of the Act.

44. **Finding:** The Commission noted that the relevant market for the purpose of competition assessment in this case as delineated by the DG would be “*market for provision of services for development and sale of institutional plots in the State of Haryana*”. In this relevant market, HUDA was found to be dominant. In relation to the allegation under Section 4(2)(a) of the Act, the Commission, however, refrained from giving any determinative findings in view of the issue being a policy matter.

45. **Direction:** The Commission found merit in the argument of HUDA that they have not permitted transfer of the institutional plots in public interest and as a matter of policy to prevent unjust enrichment and profiteering by allottees of such plots, and the Commission, in an order dated 19<sup>th</sup> January 2021, found no case of contravention of the provisions of Section 4 of the Act by HUDA.

46. For the detailed order of the Commission, please visit:  
<https://www.cci.gov.in/sites/default/files/94-of-2016.pdf>

### 3.5. Mergers and acquisitions

47. The provisions of the Act for merger regulation of combinations were brought into effect on 1<sup>st</sup> June 2011. Sections 5 and 6 of the Act require mandatory notification to CCI of all acquisitions, mergers and amalgamations that exceed specified asset to 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 gives its approval or if 210 days have passed from the date of the notice.

### 3.6. Statistics of merger filings to CCI

48. Till 31<sup>st</sup> March 2021, CCI received 826 combination notices/cases, of which 815 cases have been disposed and 11 cases are pending. Sector-wise distribution of combination notices received during the year has been presented in following table:

**Table 2. Sector-wise distribution of combination notices received during 2020–21**

S. No.	Sector	2020–21
1.	Pharmaceuticals & Health Care	14
2.	Finance & Markets	13
3.	Power & Power Generation	9
4.	Auto & Auto Components	4
5.	PVC & Chemicals	4
6.	Telecom	4
7.	Logistics	4
8.	Information Technology & Services	3
9.	E-commerce	3
10.	Real Estate	3
11.	Airports/Airlines/Infrastructure	2
12.	Mining & Metals	2
13.	Retail	2
14.	Textile	2
15.	Power Equipment	2

16.	Security Services	2
17.	Media & Entertainment	1
18.	Food & Refined Oil	1
19.	Engineering Consultant	1
20.	Road Construction & Operation	1
21.	Water Supply and Waste Management	1
22.	Heavy Industries	1
23.	Fertilizers	1
24.	Oil & Gas	1
25.	Ports	1
26.	Packaging Material	1
	Total	83

### 3.7. Important orders of CCI under Sections 5 and 6 of the Act in 2020–21

#### 3.7.1. Commission approves acquisition of Metso's Minerals business by Outotec Oyj, with modifications—Combination Registration No.C-2020/03/735

49. On 18<sup>th</sup> June 2020, CCI approved the proposed acquisition of the mineral business of Metso Minerals ('Metso') by Outotec (both Metso and Outotec referred to as 'Parties'), subject to carrying out certain modifications proposed by the Parties.

50. The Proposed Combination involves a partial demerger of Metso pursuant to the Finnish Companies Act to the effect that all such assets, rights, debts and liabilities of Metso that relate to or primarily serve its minerals business (comprising mining, aggregates, and recycling businesses) will be acquired by Outotec. In return for the transfer of Metso Minerals to Outotec, the shareholders of Metso will receive newly issued shares in Outotec and hold the majority of the new entity's shares (~78%). Outotec's shareholders will hold 22%. The combined entity will operate under the name Metso Outotec. However, Metso's flow control business, serving the process industries, will continue to exist independently under the name Neles.

51. Outotec is a public limited liability company incorporated and registered under the laws of Finland. It is present in India in the supply of equipment for the process(es) of (i) Flotation, (ii) Sedimentation, (iii) Filtration, (iv) Thermal Processing, i.e., Iron Ore Pelletizing (IOP), (v) Hydrometallurgy, and (vi) Refining.

52. Metso is also a public limited liability company incorporated and registered under the laws of Finland. It is present in India in the supply of equipment for the process(es) of (i) Crushers, (ii) Grinding Mills, (iii) Flotation, (iv) Filtration, (v) IOP, (vi) Slurry handling, (vii) Materials handling, (viii) Size control, (ix) Aggregates Capital Equipment, and (x) Recycling.

53. After considering the facts and material on record, details provided in the notice, submissions of the Parties from time to time, competitor responses and customer responses, the Commission formed a *prima facie* opinion that the proposed combination is likely to cause AAEC on competition in the segment of IOP in India.

54. The Commission found that the Proposed Combination is an integration of two strong and close competitors in the market for IOP Equipment Island in India and appears to: (i) limit the number of suppliers available to customers in this market in India; (ii) reduce the intensity of innovation in the technology for pelletising technology and equipment; (iii) perpetuate the substantial market position of the Parties in the market and reduce or

eliminate the competitive pressure that would prevail in the absence of Proposed Combination; (iv) reduce the extent of countervailing bargaining power that customers enjoy on account of the competition exerted by independent presence of Metso and Outotec; (v) increase the cost of entrants and rivals to compete and increase their presence in the market, given that there is no likeliness of a timely and sufficient entry that could act as a competitive constraint to the combined entity; (vi) result in the creation of a strong integrated player. Thus, the Commission was of the view that the Proposed Combination would reduce competition and confer the combined entity, the ability to increase price, etc.

55. In order to address the competition concerns arising as a result of the Proposed Combination, the Parties proposed voluntary remedies/modifications (VRP). The Commission noted that the VRP given by Parties eliminates the overlap between the Parties in the IOP segment in India and would effectively transfer Metso's Indian Straight Grate (SG) IOP capital equipment business to a suitable buyer, thereby preserving the competition.

56. The modification essentially involves transferring a right to fully use and exploit the SG IOP capital equipment drawings, including the related registered IP, by way of an exclusive and irrevocable license, subject to a lump sum upfront payment and no ongoing royalties. VRP will allow the emergence of a new competitor, thus resolving any concerns whatsoever in relation to this segment. Accordingly, the Proposed Combination was approved.

57. For the detailed order with remedies package, please visit:

[https://www.cci.gov.in/sites/default/files/Notice\\_order\\_document/Order735.pdf](https://www.cci.gov.in/sites/default/files/Notice_order_document/Order735.pdf)

**3.7.2. Commission approves acquisition of upto 58.92% share capital of HealthCare Global Enterprises Limited (Target) by Aceso Company Pte. Ltd. (Acquirer)—Combination Registration No.C-2020/06/749**

58. The Proposed Combination was completed in two steps—acquisition of 35.11% of the fully diluted issued, subscribed, and paid up share capital of the Target through subscription of shares and warrants; and acquisition of upto 23.82% of the fully diluted issued, subscribed, and paid up share capital by way of an Open Offer to public shareholders as per the Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulations, 2011.

59. Acquirer, incorporated in Singapore, is part of the CVC Network. It neither has any physical presence in India nor any portfolio companies or investments in India. The CVC Network consists of (i) CVC Capital Partners SICAV-FIS S.A. ('CVC') (including its subsidiaries) and (ii) CVC Capital Partners Advisory Group Holding Foundation (including its subsidiaries). These are privately owned entities whose activities include providing investment advice to and/or managing investments on behalf of certain investment funds and platforms ('CVC Funds'). The ultimate control over the CVC Funds lies with CVC.

60. Target is a provider of speciality healthcare in cancer and fertility. Under the HCG brand, it operates 22 cancer care centres and four multispecialty hospitals in India. Through its subsidiary, BACC Healthcare Private Limited, it operates eight fertility centres under the Milann brand. Target also owns approximately 38.2% in Strand Life Sciences Private Limited which, *inter alia*, provides clinical diagnostic services.

61. It was observed that no direct horizontal, vertical, or complementary overlaps exist between the Acquirer and the Target. However, some portfolio companies of the CVC Funds record sales in India in connection with activities that exhibit potential vertical or complementary relationships to the activities of the Target. The Commission observed that

the market share of the portfolio companies is miniscule in their respective segments and there are several players present in each segment. In view of this assessment, the proposed combination was approved under Section 31(1) of the Act on 15<sup>th</sup> July 2020.

62. For the order, please visit:

[https://www.cci.gov.in/sites/default/files/Notice\\_order\\_document/Order749.pdf](https://www.cci.gov.in/sites/default/files/Notice_order_document/Order749.pdf)

**3.7.3. Commission approves the proposed acquisition of (i) 9.09% of the total issued, subscribed and paid-up share capital of Escorts Limited by Kubota Corporation (Kubota) (ii) of 40% of the total issued, subscribed and paid-up share capital of Kubota Agricultural Machinery India Private Limited by Kubota from Sumitomo Corporation, Japan—Combination Registration No. C-2020/06/750**

63. Kubota, incorporated in Japan, is a comprehensive agriculture product manufacturer and offers various machinery such as tractors, combine harvesters, and rice transplanters. Kubota also offers engineering, procurement, and construction to maintenance, contributing to the safety and security of water.

64. Escorts is a public limited company incorporated in India. Escorts is engaged in the business of manufacturing and sale of agri-machinery, construction equipment, and railway equipment in India.

65. Kubota (directly/indirectly) and Escorts (directly/indirectly) exhibited horizontal overlaps in the segments of manufacture and sale of (i) tractors, (ii) combine harvesters, and (iii) diesel engines. It was observed that the incremental market share, due to the Proposed Combination, is insignificant, and there are several players present in each segment.

66. There were no existing vertical relationships and no supply arrangements between the parties. With regard to potential vertical relationships and complementary relationships, the market share of the parties was not such as to cause any competition concerns, and it appeared that the Parties do not have any ability or incentive to foreclose competition in any market.

67. Since the Proposed Combination is not likely to have an appreciable adverse effect on competition in India, the Commission approved the same under sub-section (1) of Section 31 of the Act on 10<sup>th</sup> July 2020.

68. For a summary of the case, please visit:

[https://www.cci.gov.in/sites/default/files/notice\\_order\\_summary\\_doc/C-2020-06-750.pdf](https://www.cci.gov.in/sites/default/files/notice_order_summary_doc/C-2020-06-750.pdf)

**3.7.4. CCI received a notice for Acquisition of CG Power and Industrial Solutions Limited by Tube Investments of India Limited—Combination Registration No.C-2020/09/769**

69. The Commission received a notice under Section 6(2) of the Act, filed by Tube Investments of India Limited (TIIL). The Notice has been filed in relation to the acquisition of more than 50% of the equity share capital of CG Power and Industrial Solutions ('CG Power') by TIIL. The acquisition was envisaged pursuant to the resolution of stress in CG Power as per the Reserve Bank of India (Prudential Framework for Resolution of Stressed Assets) Directions 2019.

70. TIIL, a Murugappa Group entity, is a listed entity engaged in the manufacture of products for the automotive, railway, construction, mining, and agriculture industries. CG

Power is also a listed company. It has two major business units—power systems and industrial systems. The power systems business unit focuses on power transmission, distribution, power solutions, setting up of integrated power systems, and associated services businesses. The industrial systems business unit consists of rotating machines (motors and alternators), automated AC, DC, and variable frequency drives and control systems as well as traction electronics and machines, signalling and coach products, and integrated solutions for railway transportation.

71. There were no horizontal overlaps between the activities of the Parties. However, there were certain vertical overlaps between the activities of Parties. A subsidiary of TIL is engaged in the supply of housing & casing products and gears & pinions that are used in the manufacture of traction motors for railway applications. CG Power is engaged in the manufacture of traction motors for railway applications. Further, an associate of TIL is engaged in the manufacture of Metallised Ceramic Cylinders that are used in the manufacture of Vacuum Interrupters. CG Power is engaged in the manufacture of Vacuum Interrupters. The Commission observed that the vertical relationships were not such as to cause appreciable adverse effect on competition in India.

72. For a summary of the combination, please visit:

[http://cci.gov.in/sites/default/files/notice\\_order\\_summary\\_doc/C-2020-09-769.pdf](http://cci.gov.in/sites/default/files/notice_order_summary_doc/C-2020-09-769.pdf)

***3.7.5. Acquisition of 100% equity shareholding of TN Urja Private Limited, Essel Urja Private Limited, PN Renewable Energy Limited, PN Clean Energy Limited, KN Indi Vijayapura Solar Energy Private Limited, KN Bijapura Solar Energy Private Limited, KN Muddebihal Solar Energy Private Limited, KN Sindagi Solar Energy Private Limited, Essel Bagalkot Solar Energy Private Limited, Essel Gulbarga Solar Power Private Limited by Adani Green Energy Twenty Three Limited—Combination Registration No. C-2020/09/772***

73. CCI received this Notice from Adani Green Energy Twenty Three Limited ('Acquirer'/AGE23L) for acquiring 10 target companies belonging to Adani Green Energy Ten Limited (AGE10L).

74. Acquirer is a joint venture between Adani Green Energy Limited (AGEL) and Total Solar Singapore Pte. Ltd. (TSSG). TSSG belongs to the Total Group, of which Total SE ('Total') is the ultimate parent entity. The formation of the Acquirer as a joint venture transaction between TSSG and AGEL was approved by the Commission *vide* order dated 1<sup>st</sup> April 2020 in Case No. C-2020/03/736. In the said case, the parties stated that the instant transaction is interconnected with the combination notified in terms of Regulation 9(4) and (5) of the Competition Commission of India (Procedure in regard to the transaction of business relating to combinations) Regulations, 2011 (Combination Regulations) and undertook to give a separate notice upon the execution of the purchase agreement.

75. Both the Acquirer group and Target Companies are engaged in the business of power generation through renewable sources including solar energy in India. The power generated by them is sold to their customers or power procurers under long-term power purchase agreements. The Proposed Combination would result in total acquiring joint control over the Target Companies. As a result, the control of AGEL over the Target Companies will reduce from sole to joint control.

76. The combined market share of the parties in the business segments for power generation from renewable sources and solar power in India are less than 5% and less than 10%, respectively. In these business segments, the incremental market share as a result of

the Proposed Combination was also insignificant due to the limited presence of the Target Companies in the power generation business.

77. For the order, please visit:

[https://www.cci.gov.in/sites/default/files/Notice\\_order\\_document/C-2020-09-772O.pdf](https://www.cci.gov.in/sites/default/files/Notice_order_document/C-2020-09-772O.pdf)

**3.7.6. CCI approves acquisition of General Insurance Business of Bharti AXA General Insurance Company Limited (Bharti AXA) by ICICI Lombard General Insurance Company Limited (ICICI Lombard)—Combination Registration No.C-2020/09/773**

78. The Commission, *vide* its order dated 2<sup>nd</sup> November 2020, approved the combination involving the acquisition of General Insurance Business of Bharti AXA by ICICI Lombard under Section 31(1) of the Act.

79. On 22<sup>nd</sup> September 2020, CCI received a Notice jointly filed by ICICI Lombard and Bharti AXA (hereinafter, ICICI Lombard and Bharti AXA are collectively referred to as ‘Parties’). The Notice was filed pursuant to the Implementation Agreement dated 21<sup>st</sup> August 2020 and Scheme of Arrangement dated 21<sup>st</sup> August 2020 approved by the respective board of directors of ICICI Lombard and Bharti AXA.

80. The Proposed Combination involved the transfer of the entire general insurance business of Bharti AXA by way of a demerger to ICICI Lombard on a going concern basis, in consideration of issuance of the Consideration Shares by ICICI Lombard to Bharti and AXA (collectively, ‘Promoters of Bharti AXA’).

81. Bharti AXA, an entity incorporated in India, is registered as a general insurance company with the Insurance Regulatory and Development Authority of India (IRDAI). It is engaged in providing general insurance products, including motor, health, travel, crop, and home insurance. Bharti AXA is a joint venture between Bharti, a business group with interests in telecom, agriculture business, and retail, and AXA, an organisation with interests in financial protection and wealth management. The joint venture company is held by Bharti (51%) and AXA (49%).

82. ICICI Lombard is a listed private sector general insurance company incorporated in India and registered with IRDAI. It is engaged in providing general insurance products, including motor, health, crop/weather, fire, personal accident, marine, engineering, and liability insurance.

83. Both Bharti AXA and ICICI Lombard are engaged in the general insurance business in India. Within the general insurance business, Bharti AXA and ICICI Lombard overlap in the segments of fire insurance, motor insurance, health insurance, marine insurance, engineering insurance, liability insurance, and other lines of business of general insurance. Within these segments, the Parties further overlap in the following sub-segments: (i) Motor Third Party Damage (TP) and Motor Own Damage (OD); (ii) Marine Cargo and Marine Others; (iii) Workmen’s Compensation; (iv) Health—Personal Accident and Health—Travel; (v) Liability—Public Liability and Other Liability; (vi) Credit Insurance; and (vii) Others.

84. Further, certain entities of the ICICI Group carry out the distribution of general insurance products (ICICI Distribution Entities) as corporate agents, distributing only the general insurance products of ICICI Lombard and not any other third party. As such, no existing vertical relationship exists between the Parties. However, considering that Bharti AXA provides general insurance products and ICICI Distribution Entities are engaged in the distribution of insurance products in India, there exists a possibility for a potential

vertical relationship between the Parties. In this context, the Parties defined the relevant product market at the upstream level as the market for general insurance products in India (Upstream Market) and at the downstream level as the market for distribution of general insurance products in India (Downstream Market).

85. Although the segments/relevant market identified by the Parties for the purposes of assessment were considered by the Commission, the exact delineation of the relevant market was left open, as the Proposed Combination was not likely to cause any competition concern in India.

86. In terms of horizontal overlaps, the Commission noted that the presence of the Parties in the general insurance business, as well as most of its further segments and sub-segments, as mentioned above, and/or the increment due to the Proposed Combination was not significant to cause any appreciable adverse effect on competition. Only in the health insurance segment was the combined market share of the Parties in terms of the number of policies more than 30% and the increment in market share in the range of 5–10%. However, the combined market share in terms of Gross Direct Premium Income (GDPI) in this segment was less than 10% and the increment was also less than 5%. It was noted from the submission of the Parties that the high volume of policies in the health insurance segment was on account of travel insurance policies included therein, which resulted in high volume but significantly low premium income, i.e., GDPI. It was noted that if policies pertaining to travel insurance were excluded, the combined market share of the Parties in the health insurance segment in terms of volume was less than 10%. Further, in the travel insurance sub-segment, it was observed that, although the combined market share in terms of volume was in the range of 25–30%, the increment in market share was less than 5%. Moreover, in terms of GDPI, the combined market share in travel insurance was insignificant.

87. Further, in terms of the potential vertical relationship, no competition concern was found due to the insignificant presence of the Parties at the identified upstream and downstream level. Additionally, it was observed that several other players were present in the general insurance business, such as New India Assurance, United India Insurance, National Insurance Company, Oriental Insurance Company, and Bajaj Allianz General Insurance, which continue to pose competitive constraints to the Parties post the Proposed Combination.

88. A copy of the order passed by the Commission in the instant case is available at: [http://www.cci.gov.in/sites/default/files/Notice\\_order\\_document/C-2020-09-773\\_0.pdf](http://www.cci.gov.in/sites/default/files/Notice_order_document/C-2020-09-773_0.pdf)

### ***3.7.7. CCI received the following Green Channel notifications during October 2020 to December 2020***

#### ***Acquisition of G4S PLC by Allied Universal Topco LLC***

89. The Proposed Combination is related to the acquisition of G4S PLC (‘Target’) by Allied Universal Topco LLC (‘Acquirer’)—a company jointly controlled by Warburg Pincus LLC (‘Warburg’) and Caisse de Dépôt et Placement du Québec (CDPQ). The Acquirer is a security services and facilities management company headquartered in California, United States. The Target is a global provider of security solutions headquartered in London, United Kingdom. On 8<sup>th</sup> December 2020, the Acquirer announced its firm intention to acquire the entire issued and to be issued share capital of the Target through Atlas UK Bidco Limited, a newly incorporated entity indirectly controlled by the Acquirer pursuant to Rule 2.7 of the City Code on Takeovers and Mergers. As per the Notice, the Acquirer is neither directly nor indirectly engaged in any business



activity in India. Additionally, neither Warburg nor CDPQ or any of their group entities hold any shares or voting rights in any portfolio entity which is active in a similar business as that of or share vertical/complementary links with the Target's business in India.

*Acquisition of G4S PLC by Garda World Security Corporation through its wholly owned indirect subsidiary Fleming Capital Securities, Inc. ('Acquirer')*

90. The Proposed Combination is related to the acquisition of G4S PLC ('Target') by the Acquirer. The Acquirer is a security services and cash services company based in Canada, offering physical security services and end-to-end cash management solutions. The Target is a global integrated security business offering a broad range of security services. On 30<sup>th</sup> September 2020, the Acquirer announced a firm cash offer to acquire the entire issued and to be issued share capital of the Target pursuant to Rule 2.7 of the City Code on Takeovers and Mergers and published its offer on 17<sup>th</sup> October 2020. As per the Notice, the Acquirer group (including Acquirer) has no direct or indirect business presence in India.

*Internal reorganisation by way of a merger of Ferdinand Porsche Familien-Holding GmbH (FPFH) into Dr. Wolfgang Porsche Holding GmbH (WPH)*

91. The Proposed Combination is related to the internal reorganisation to be implemented by way of a merger of FPFH into WPH. Both WPH and FPFH are holding companies and do not directly conduct any commercial activities in India. Neither FPFH nor WPH have any direct or indirect shareholding or control in any other enterprise that exhibit horizontal overlaps, vertical interface, or complementarity.

*Acquisition of upto 40% of the total share capital of International Cargo Terminals and Infrastructure Pvt. Ltd.(ICTIPL) by IISA VIII*

92. The Proposed Combination was contemplated in a series of intermediate steps, broadly envisaging acquisition of shareholding in certain subsidiaries of JM Baxi Group (JMB) by Integral Investments South Asia VIII (IISA VIII). IISA VIII is a newly incorporated special purpose vehicle controlled by Bain Capital Asia Fund IV, LP ('Asia IV') which, in turn, is ultimately controlled by Bain Capital Investors LLC ('Bain Capital'), a private equity investment firm that invests, through its family of funds, in companies across many industries. ICTIPL is wholly owned by promoters of the JMB Promoter Group. ICTIPL is engaged in the business of providing container freight station (CFS) operation, handling of bulk cargo, containerised rail freight services, and other ancillary services.

***3.7.8. CCI approves acquisition of 49% equity shares by Odisha Hydro Power Corporation Limited (OHPC) in Odisha Power Generation Corporation Limited (OPGC) from AES OPGC Holding and AES India Private Limited— Combination Registration No. C-2020/11/787***

93. On 10<sup>th</sup> November 2020, CCI received a Notice under Section 6(2) of the Act from Odisha Hydro Power Corporation Limited (OHPC/'Acquirer'). The Notice was filed pursuant to the execution of the Share Sale and Purchase agreement (SSPA) by and amongst AES OPGC Holding, AES India Private Limited, the Government of the State of Odisha, and Odisha Power Generation Corporation Limited (OPGC/'Target') on 9<sup>th</sup> November 2020.

94. The Proposed Combination approved by the Commission under Section 31(1) of the Act on 8<sup>th</sup> December 2020 involved the acquisition of 49% equity shares by OHPC in OPGC from AES OPGC Holding and AES India Private Limited (Proposed Combination).

95. OHPC is a state government company wholly owned and controlled by the Government of Odisha. It (including its subsidiaries, joint ventures, or affiliates) is engaged in the business of generation of power from renewable sources, namely, hydroelectric and solar power.

96. OPGC is a state-owned joint venture enterprise in which the Government of Odisha holds 51% shareholding and the remaining 49% shareholding is held by AES Corporation, U.S.A. (through AES OPGC Holding and AES India Private Limited). It is primarily engaged in the business of power generation by using coal-based thermal power plants as well as hydro power plants.

97. The activities of both Parties had horizontal overlaps in the generation of power, particularly hydroelectric power. Based on the overlaps, the Parties had defined the relevant market as (i) market for generation of power in India (Broad Relevant Market); and (ii) market for generation of hydroelectric power in India (Narrow Relevant Market). The Broad and Narrow Relevant Markets are jointly referred to as Relevant Markets.

98. However, the exact delineation of relevant market was left open in the case by the Commission, as the Proposed Combination was not likely to cause an appreciable adverse effect on competition in any of the plausible relevant markets.

99. Further, the Commission noted that the combined market share of Parties was less than 5% in terms of installed capacity as well as actual power generation, and the incremental market share was also insignificant in both Relevant Markets. Moreover, there were other players in each relevant market defined by the Parties, i.e., in the Broad Relevant Market, such as, NTPC Ltd., Tata Power Ltd., Adani Power Ltd., and Reliance Power Ltd., and in the Narrow Relevant Market, such as NHPC Ltd., SJVN Ltd., and NTPC Ltd.

100. The Commission was of the opinion that the Proposed Combination is not likely to have an appreciable adverse effect on competition in India and therefore, approved the same.

101. A copy of the order passed by the Commission in the instant case is available at: [https://www.cci.gov.in/sites/default/files/Notice\\_order\\_document/C-2020-1-787.pdf](https://www.cci.gov.in/sites/default/files/Notice_order_document/C-2020-1-787.pdf)

***3.7.9. Commission approves the proposed combination of TPG Growth V SF Markets Pte. Limited (“TPG”), Korea Investment Corporation (“KIC”) and API Holdings Private Limited (“API”)—Combination Registration No. C-2020/11/788***

102. On 30<sup>th</sup> December 2020, Commission approved the proposed acquisition by TPG of 8% equity shareholding (on a fully diluted basis) of API, by primary and secondary acquisitions.

103. TPG is a newly incorporated company in Singapore and is majority funded by the TPG Growth V Fund (‘Fund’) or its affiliates. TPG Global, a private investment fund, manages the day-to-day activities of the Fund and is responsible for investment decisions and invests in a variety of companies through acquisitions and corporate restructurings.

104. KIC is a corporation established in the Republic of Korea and manages assets entrusted to it by the Government of the Republic of Korea and the Bank of Korea. KIC is 100% owned by the Ministry of Economy and Finance of the Republic of Korea (‘Korean MOEF’) and invests as an agent or an investment manager for the Korean MOEF. KIC will

be acquiring certain shareholding in TPG Growth V Accord II, Limited Partnership, which will be funding TPG.

105. API, incorporated in India, is directly or through subsidiaries engaged, *inter alia*, in the following businesses: (i) wholesale sale and distribution of drugs (including pharmaceutical products, medical devices, and over-the-counter (OTC) drugs); (ii) provision of transportation services; (iii) owning technology and intellectual property for developing e-commerce platforms; (iv) developing ERP and software solutions; (v) operating and providing online applications, which provides a B2B order management system for retailers and distributors of pharmaceutical products, medical devices, and OTC drugs; (vi) developing a platform which connects registered medical practitioners (RMPs) and patients; and (vii) manufacturing and marketing pharmaceutical, Ayurvedic, and nutraceutical products, medical devices, hygiene products, life-saving medicines, herbal products, and food supplements.

106. The Parties did not exhibit any horizontal overlaps. However, there were certain vertical relationships, existing and potential, between the portfolio companies of TPG Global and API.

107. It was observed that the market share of each of the portfolio company of TPG Global and the Target was between [0–5%] in each of the segment/sub-segment in India and there were several players present. Accordingly, based on the market shares submitted, it appeared that the Parties did not have any ability or incentive to foreclose competition.

108. Since the Proposed Combination was not likely to have an appreciable adverse effect on competition in India, the Commission approved the same under sub-section (1) of Section 31 of the Act.

109. For a summary of the case, please visit:

[https://www.cci.gov.in/sites/default/files/notice\\_order\\_summary\\_doc/SummaryC-2020-11-788.pdf](https://www.cci.gov.in/sites/default/files/notice_order_summary_doc/SummaryC-2020-11-788.pdf)

### ***3.7.10. CCI approves acquisition of Columbia Asia Hospitals Private Limited by Manipal Health Enterprises Private Limited—Combination Case No. C-2020/11/789***

110. The Commission, *vide* its order dated 8<sup>th</sup> January 2021, approved the acquisition of 100% shareholding of Columbia Asia Hospitals Private Limited (CAHPL) by Manipal Health Enterprises Private Limited (MHEPL).

111. MHEPL is a part of Manipal Educational and Medical Group ('Manipal Group'), which operates a network of hospitals providing multi-speciality care. Manipal Group has presence through 15 hospitals in seven cities of India under the brand name Manipal Hospitals.

112. CAHPL is a private healthcare company and currently operates a chain of 11 multi-speciality hospitals and one tele-radiology business in India. CAHPL is a part of International Columbia US LLC, an international healthcare group, which operates a chain of modern hospitals across India, China, and Africa.

113. After considering the business activities of the Parties, the Commission observed that the hospitals owned and/or operated by both MHEPL and CAHPL exhibited horizontal overlap for the provision of services falling under the category of tertiary and quaternary care. The Parties' activities also exhibited vertical and/or complementary overlap in the segments of retail diagnostics market and tele-radiology service. However, the

Commission observed that the incremental market share in each of these overlapping business was not such as to raise any competition concern.

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

115. For the order, please visit:

[https://www.cci.gov.in/sites/default/files/Notice\\_order\\_document/Order789.pdf](https://www.cci.gov.in/sites/default/files/Notice_order_document/Order789.pdf)

**3.7.11. CCI approves acquisition of a 7.8% minority stake in Aditya Birla Fashion and Retail Ltd (ABFRL) by Flipkart Investments Private Ltd (FIPL)—Combination Case No. C-2020/12/792**

116. The Commission, *vide* its order dated 20<sup>th</sup> January 2021, approved the acquisition of 7.8% shareholding in ABFRL by FIPL (FIPL and ABFRL collectively referred to as ‘Parties’). FIPL, a newly incorporated company under the laws of Singapore, is a wholly owned subsidiary of Flipkart Private Limited (FPL). FPL, in turn, belongs to the Walmart Group, which comprises Walmart Inc. (‘Walmart’) and its affiliates. The business activities of the Walmart Group in India are: (i) wholesale cash and carry of goods (B2B sales) such as mobiles, electronics (including large appliances such as television, washing machine, etc.), lifestyle (including AFA), books and general merchandise (including groceries, toys), home furnishing (including kitchenware), and furniture; (ii) provision of marketplace-based e-commerce platforms to facilitate trade between customers and sellers in India; (iii) UPI and prepaid payment instrument services; and (iv) provision of various ancillary services such as payment gateway, advertising services, information technology product related issues, logistics, courier, and other allied services.

117. ABFRL is a part of the Aditya Birla conglomerate. ABFRL (including through its subsidiaries) is engaged in the business of manufacturing and retailing branded apparels, footwear, and accessories (AFA) through its retail stores, multi-brand outlets, departmental stores, online retail platforms, and e-commerce marketplaces across India.

118. The overlap in the business activities of the Walmart Group and Target (including its affiliates) is broadly in the market for ‘B2B sales in India’ or narrowly in the segment for ‘B2B sale of AFA products in India’. In terms of the vertical/complementary relationship between the products/services of the Parties, the Walmart Group is a customer of ABFRL and situated downstream to ABFRL in terms of its B2B sales. Also, a potential vertical relationship exists between the B2B business of the Walmart Group (upstream) and ABFRL (downstream), whereby the Walmart Group could supply its AFA category products to ABFRL on a B2B basis, which ABFRL might then sell to end-customers. Further, the Walmart Group is engaged in the provision of e-commerce marketplace services in India, which ABFRL uses as one of the channels of sales. Additionally, PhonePe’s UPI payment application and the mobile wallet are complementary to ABFRL’s (both B2B and B2C) sales in India, which are also utilised by ABFRL to undertake its sales in India, among various other digital payment solutions. Furthermore, ABFRL is a seller on the Walmart Group’s e-commerce marketplaces in India and a user of the integrated logistics services (including warehousing facilities, distribution facilities, and allied solutions) offered by the Walmart Group to all the sellers listed on its marketplace on the same terms.

119. The Commission observed that the combined market share of the Parties in the market for ‘B2B sales in India’ and ‘B2B sale of AFA products in India’ was 0–5% and 5–10%, respectively. Further, the incremental market share was insignificant in both segments. Moreover, other players, such as Amazon Wholesale, Reliance Retail, and Metro Cash and Carry, were present in ‘the market for B2B sales in India’ and Page Industries,

Raymond, and Arvind Limited in ‘B2B sale of AFA products in India’ posing competitive constraints on the Parties post the Combination. Further, the Commission noted that neither existing nor potential vertical/complementary relationships between the products/services of the Parties appeared to be significant.

120. Additionally, the Commission noted that Flipkart India Private Limited (‘FK India’) and ABFRL had agreed to enter into a strategic Commercial Arrangement. The Commission observed that the Commercial Agreement essentially related to the distribution of certain identified branded products of ABFRL through e-commerce platforms of Walmart Group (group to which the Acquirer belongs) to the exclusion of certain platforms identified in the said Agreement. The Commission issued an advisory to the Acquirer in this matter.

121. The Commission was of the opinion that the Proposed Combination is not likely to have an appreciable adverse effect on competition in India and therefore, approved the same.

122. A copy of the order passed by the Commission in the instant case is available at: [https://www.cci.gov.in/sites/default/files/Notice\\_order\\_document/C-2019-12-792O.pdf](https://www.cci.gov.in/sites/default/files/Notice_order_document/C-2019-12-792O.pdf)

### ***3.7.12. CCI approves acquisition of shareholding in Adani Green Energy Limited by Total SE—Combination Registration No.C-2020/12/800***

123. The Commission, *vide* its order dated 11<sup>th</sup> January 2021, approved the acquisition of shareholding in Adani Green Energy Limited (AGEL) by Total SE (‘Acquirer’) through its subsidiary Total Renewables SAS.

124. Total SE, along with its subsidiaries and affiliates (‘Total Group’) is an international integrated energy producer with operations in various sectors of the oil and gas industry. Total Group is also involved in the renewable energy and power generation sectors.

125. AGEL is a public listed company incorporated in India and is engaged in power generation through renewable energy, i.e., through solar and wind energy.

126. After considering the business activities of the parties, the Commission observed that the Parties exhibited horizontal overlap in the market for power generation at a broader level and solar energy at a narrow level. The Commission found that the incremental market share in the said segments is not significant. Further, there are several other players who were significant and/or prominent in overall power generation as well as solar energy.

127. Since the Proposed Combination was not likely to have an appreciable adverse effect on competition in India, the Commission approved the same under sub-section (1) of Section 31 of the Act.

128. A copy of the order passed by the Commission in the instant case is available at: [https://www.cci.gov.in/sites/default/files/Notice\\_order\\_document/Order800.pdf](https://www.cci.gov.in/sites/default/files/Notice_order_document/Order800.pdf)

## **4. Human Resource**

129. At present, the Commission comprises a Chairperson and two Members. The administrative functions of CCI are co-ordinated by the Secretariat, which is headed by the Secretary. The office of the DG investigates contraventions of the provisions of the Act and is headed by the DG. In addition, there are eight main divisions of CCI, namely,

Advocacy, Antitrust, Capacity Building, Combination, Economics, International Cooperation, Investigation, and Legal. Each division is steered by a senior officer at the level of Adviser. The divisions assist the Commission in the fulfilment of its legal mandate. At present, 157 staff members (46 lawyers; 25 economists; 31 other professionals; and 55 support staff) work at CCI.

130. In addition, there are 178 outsource staff engaged by CCI.

131. CCI has a competition-related budget of INR 41 Crore (5.6 million USD as on 31<sup>st</sup> March 2021) (excluding Budget for Capital) for the year 2020–21.

## 5. Summaries of or References to New Reports and Studies on Competition Policy Issues

### 5.1. Workshop on Competition Issues in Telecom Sector

132. CCI organised a workshop on competition issues in the telecom sector on 5<sup>th</sup> February 2021 through the virtual mode. The day-long workshop was conducted by the Commission as part of its market study on the telecom sector in India, launched in January 2020 to develop a clear understanding of competition dynamics in the sector. Shri Anshu Prakash, Chairman, DCC, and Secretary, DOT, GOI, delivered the Keynote Address in the workshop. For additional details, please visit:

[http://www.cci.gov.in/sites/default/files/whats\\_newdocument/Market-Study-on-the-Telecom-Sector-In-India.pdf](http://www.cci.gov.in/sites/default/files/whats_newdocument/Market-Study-on-the-Telecom-Sector-In-India.pdf)

## 6. International Cooperation

### 6.1. Memorandums or arrangements signed with agencies of foreign countries

133. As mandated under Section 18 of the Competition Act, 2002, till March 2021, CCI has entered into Memorandum of Understanding (MoU), after obtaining approval from the Government of India, with the following competition authorities:

1. Federal Trade Commission (FTC) and Department of Justice (DOJ), USA;
2. Director General Competition, European Union (EU);
3. Federal Antimonopoly Service (FAS), Russia;
4. Australian Competition and Consumer Commission (ACCC);
5. Competition Bureau (CB) Canada; and
6. Competition authorities of the Federative Republic of Brazil, the Russian Federation, the Republic of India, the People’s Republic of China, and the Republic of South Africa (BRICS countries).

### 6.2. Overseas projects undertaken

134. To develop wider co-operation on issues of mutual interest, BRICS Competition Authorities have formed sector study groups to understand competition concerns in various sectors. Under the aegis of Automotive Working Group of BRICS, the agencies decided to carry out a study “A Study on Competition Issues in the Automotive Sector” with CCI as the project lead for the Automotive Working Group and the Competition Commission of South Africa

(CCSA) as co-lead for the project. The objective of the study is to identify existing and potential competition issues arising out of automotive industry w.r.t. BRICS countries and develop an understanding between the BRICS competition agencies of possible ways to deal with them.

135. CCI organised a virtual workshop of the BRICS Competition Agencies Working Group on Automotive Sector, titled “Competition Issues in Automotive Sector” from 5<sup>th</sup>–6<sup>th</sup> November 2020. Shri Ashok Kumar Gupta, Chairperson, CCI, virtually addressed the workshop in the presence of Members of the Commission, Dr. Sangeeta Verma and Shri Bhagwant Singh Bishnoi.

136. The workshop was attended by senior officers of BRICS Competition Agencies. Representatives of BRICS Competition Agencies made presentations highlighting the key developments in the automotive sector in their respective jurisdictions. The challenges, arising out of the new-age digital economy were also deliberated, along with the importance of advocacy and the way forward.

### 6.3. Memberships of international organisations

#### 6.3.1. *International Competition Network*

137. The International Competition Network (ICN) is a virtual international organisation and its member represents competition authorities across the globe. The work of ICN takes place in project-oriented working groups, where members work together largely through tele-conferences, teleseminars, webinars, workshops, etc.

138. ICN provides a platform which allows for dynamic dialogue that serves to build consensus and convergence towards sound competition policy principles across the global antitrust community. It also holds workshops and an annual conference, which is hosted by one of its member agencies. CCI is a member and has been an official invitee to the conferences and workshops organised by ICN.

139. During 2020–21, CCI participated in ICN Annual Conference which was organised virtually by the US Competition Agencies (Federal Trade Commission & Department of Justice) during 14<sup>th</sup>–17<sup>th</sup> September 2020. The conference was webcasted for wider participation of the Competition Agencies. Chairperson, CCI, addressed the Merger Working Group (MWG) Plenary on Digital Merger on 15<sup>th</sup> September 2020.

140. One officer from CCI participated as a speaker in the session on Practical Aspects of Merger Assessment in the ICN Merger Working Group Regional Webinar for Asia-Pacific on Merger Control in Times of Crisis on 28<sup>th</sup> October 2020.

141. CCI provided information for the ICN 3<sup>rd</sup> Decade Project Survey and COVID-19 related polices of CCI to the Agency Effectiveness Working Group.

142. CCI is Co-Chair of ICN’s Operational Framework Working Group (OFWG) along with Competition Bureau (CB), Canada. The Co-Chairs of the OFWG are planning to revise the Operational Framework of ICN. The process of reviewing the Operational Framework document has begun, taking into account the views and perspective of OFWG members through online meetings.

#### 6.3.2. *BRICS Competition Authorities*

143. BRICS is an association of five major economies, namely, Brazil, Russia, India, China, and South Africa. A similar co-operation exists between the BRICS Competition Authorities. An MoU between the competition authorities of Brazil, Russia, India, China, and South Africa was signed on 19<sup>th</sup> May 2016 during the International Legal Forum in

Saint Petersburg, Russia. In 2020, the BRICS MoU on Cooperation in the field of Competition Law and Policy was extended for an open-end period.

144. During 2020–21, three officers participated in the online BRICS response to COVID-19 with officials from Competition Authorities of Brazil, Russia, China, and South Africa on 27<sup>th</sup> May 2020.

145. The Chairperson, along with two officers from CCI, participated in the virtual meeting of the Heads of the BRICS Competition Authorities on 23<sup>rd</sup> July 2020. During the meeting, extension of the BRICS Memorandum of Understanding on Cooperation in the field of Competition Law and Policy for an open-end period was announced. Further, the BRICS Competition Authorities announced the release of a joint statement on consolidating efforts to combat the negative economic consequences of COVID-19.

146. CCI is also participating in BRICS Ad-hoc working group for Draft Model Recommendations on the application of waiver of confidentiality in the process of considering global mergers and acquisitions.

147. Under the aegis of the Automotive Working Group of BRICS, the agencies decided to carry out a study titled “A Study on Competition Issues in the Automotive Sector”, with CCI as the project lead and the CCSA as Co-lead. CCI organised a virtual workshop of BRICS Competition Agencies on “Competition Issues in Automotive Sector” during 5<sup>th</sup>–6<sup>th</sup> November 2020.

148. One officer participated in the BRICS Competition Authorities Coordination Committee meeting held virtually on 12<sup>th</sup> November 2020.

### ***6.3.3. Organisation for Economic Co-operation and Development***

149. The Commission has an observer status with the Competition Committee of Organisation for Economic Co-operation and Development (OECD). The Commission and its officers regularly participate in the meetings of OECD Competition Committee and the OECD Global Competition Forum to gain exposure to global best practices in the field of competition law and policy.

150. CCI has been making regular written contributions for the agenda to be deliberated at various roundtables during the conferences/meetings of OECD. In 2020–21, CCI submitted three written contributions on *Abuse of Dominance in Digital Markets*, *Using Market Studies to Tackle Emerging Competition Issues*, and *Economic Analysis in Merger Investigations*. In addition, CCI submitted replies to the questionnaire on “OECD Competition Division: Survey on Basic Statistics for the Year 2019”. A written contribution on *Digital Markets and Competition Concerns: An Indian Perspective* was also submitted to OECD-GVH Regional Centre for its newsletter.

151. During 2020–21, five officers participated in the webinar on “Merger Control in Times of Crisis” on 26<sup>th</sup> May 2020 and five officers participated in the webinar on “Antitrust in Times of Crisis” on 28<sup>th</sup> May 2020.

152. OECD organised virtual meetings of Working Party 2, Competition Committee, Working Party 3 during 30<sup>th</sup> November–4<sup>th</sup> December 2020 and the Global Forum on Competition during 7<sup>th</sup>–10<sup>th</sup> December 2020. CCI was requested for intervention on topics where written contributions had been sent during the OECD Global Forum on Competition. Two officers from CCI participated in the panel on “Abuse of Dominance in Digital Markets” on 8<sup>th</sup> December 2020. A team comprising three officers participated virtually in the Breakout session on “Economic Analysis in Merger Investigations” on 9<sup>th</sup> December 2020.



153. Dr. Sangeeta Verma, Member, CCI, participated as a speaker during the 2020 Global Forum on Competition in the panel on “Using Market Studies to Tackle Emerging Competition Issues” on 10<sup>th</sup> December 2020.

154. Chairperson, CCI, along with one officer, participated virtually in the 5<sup>th</sup> Meeting of High Level Representatives of Asia-Pacific Competition Authorities—Competition Policy and Recovery, which was organised by OECD on 16<sup>th</sup> December 2020. Chairperson, CCI, addressed virtually the experience of CCI on enforcement during COVID-19 times in the meeting.

#### **6.3.4. United Nations Conference on Trade and Development**

155. The Commission has been proactively engaging with the United Nations Conference on Trade and Development (UNCTAD). UNCTAD is a UN body which is responsible for dealing with development issues, particularly international trade, which is the main driver of development.

156. CCI’s engagement with UNCTAD in 2020–21 is as follows:

- Four officers participated in the joint webinar by UNCTAD-UNESCWA-OECD on competition law and policy during and in the aftermath of the COVID-19 pandemic, and reflections in the Arab region on 16<sup>th</sup> July 2020.
- Chairperson, CCI, along with one officer, participated virtually in the UNCTAD Eighth United Nations Conference on Competition and Consumer Protection during 19<sup>th</sup>–23<sup>rd</sup> October 2020. Chairperson, CCI, addressed the Eighth UN Conference on Competition and Consumer Protection virtually for the session on Cross Border Cartels and International Cooperation under Section F. of the UN Set of Guiding Policies & Procedures on 22<sup>nd</sup> October 2020.
- One officer participated virtually as panel speaker in the session on “Strengthening Consumer Protection and Competition in the Digital Economy” in the UNCTAD Eighth United Nations Conference on Competition and Consumer Protection on 21<sup>st</sup> October 2020.
- One officer participated virtually in the UNCTAD 11<sup>th</sup> meeting of the Research Partnership Platform on competition and consumer protection law and policy during 17<sup>th</sup>–18<sup>th</sup> December 2020.
- Two officers participated in the meeting of the UNCTAD Working Group (WG) on Cross-Border Cartels (CBCs) held virtually on 4<sup>th</sup> February 2021.

#### **6.4. International delegations received by the Commission from foreign governments and others/overseas delegation received at CCI**

157. In order to gain exposure to best practices, CCI invites experts from foreign competition agencies/mature jurisdictions to share their experiences in the field of competition law and economics. In the year 2020–21, due to the ongoing COVID-19 pandemic, there were no visits. However, the following virtual events were organised:

- EU–India Competition Week (CW) was organised virtually during 10<sup>th</sup>, 11<sup>th</sup>, and 14<sup>th</sup> December 2020. Competition Week commenced with opening remarks from Mr. Ashok Kumar Gupta, Chairperson, CCI, and Mr. Ugo Astuto, Ambassador of the European Union to India, Delegation of the European Union to India and Bhutan, New Delhi.

- United States India Business Council (USIBC)—CCI organised a Virtual Roundtable on Approaches to Competition Law in Digital Economy on 28<sup>th</sup>–29<sup>th</sup> October 2020.

## 7. Advocacy Efforts

158. To create wider awareness by disseminating the various aspects of competition law, the Competition Act, 2002 ('the Act'), under Section 49, mandates the Commission to undertake competition advocacy with a large number of stakeholders cutting across numerous sectors of the economy. Besides, the Act also envisages competitive neutrality, thereby rendering Central and State Governments to also fall in the purview of the competition law. To cater to the needs of such a large variety of stakeholders, it becomes imperative that everyone be addressed as per the respective concerns and level of awareness. It has always been the endeavour of the Commission to prevent infringement of competition law rather than be a mere onlooker and penalise for infringement. In this pursuit, the Commission has undertaken a wide array of advocacy measures, as under.

159. To achieve the objectives mandated under the Act, the Commission undertakes various advocacy measures which, *inter alia*, includes:

- Carrying out market studies in various sectors to understand functioning and market dynamics thereof and emergence of competition issues particularly due to the use of technology, so as to take adequate and appropriate measures to curb likely anti-competitive practices. The Commission undertook market studies in telecom, pharma, and e-commerce sectors, and the study of the mining sector is on anvil.
- Organising advocacy programmes regularly with trade federations to gain their feedback on various issues on the one hand and to apprise them of competition concerns in the industry to nip in the bud any anti-competitive practices taking shape to distort the markets on the other, as well as educate them about the architecture of competition law and the importance of compliance of the same.
- Offering internships to students of law, economics, management, regulatory governance, and professional courses in accountancy and company law on a calendar-month basis throughout the year and encouraging them with a handsome stipend.
- Sponsoring moot court competitions on various aspects of competition law and policy.
- Regularly conducting competition advocacy programmes with universities, research institutes, administrative, judicial academies, state governments, and public sector undertakings.
- Publishing the Commission's quarterly newsletter, *Fair Play*, and other advocacy material and regular updating thereof.
- Advocacy programmes to build the capacity of various stakeholders.
- Supplementing advocacy efforts and further educating various stakeholders through publication of useful literature, e.g., (i) *Competition Advocacy—Fair Competition For Greater Good*, (ii) *Compliance Manual For Enterprises*, (iii) *Diagnostic Toolkit Towards Competitive Tenders*, (iv) *Competition Assessment Toolkit*, and (v) *Competition Law Module for Administrative and Judicial Training Academies*.

- To augment advocacy initiatives for wider reach and towards building of competition compliant culture in country, listed companies (corporates) have been approached for organising competition advocacy awareness programme.
- CCI has initiated case based advocacy for sensitising stakeholders and minimising re-occurrence of violation of competition law in sectors, areas where CCI has already passed an enforcement order.

### **7.1. New initiatives undertaken during the period are as under:**

- Living upto the government's theme of cooperative federalism, CCI opened its first Regional Office in the south in the city of Chennai. This is a leap forward to reach out to stakeholders in the southern states in India.
- Due to the challenges posed by the pandemic, it was not possible to conduct the regular internship programmes. The Commission redesigned online internship programme for stakeholders. From 1<sup>st</sup> April 2020 to 31<sup>st</sup> March 2021, 219 students from various universities underwent internship through the online mode.
- As states of the Union of India are vital stakeholders in establishing a robust competition architecture, the Commission has designed a comprehensive State Resource Persons Scheme, under which, in each state, a Nodal Officer and requisite Resource Persons have been appointed to sensitise the State machinery about the nuances of competition law, particularly in procurement process and to enable them to procure goods and services by designing competitive tenders and to equip them to detect big-rigging and other anti-competitive practices.
- The Commission organised a "National Conference on Economics of Competition Law" in March 2021.
- The Commission completed a study of the telecom sector to understand various competition nuances of the sector.
- To enhance awareness in various regions/states of the country, advocacy booklets were published in regional languages.
- To encourage scholarship in the field of competition law and policy, CCI published the first volume of the Competition Commission of India Journal on Competition Law and Policy (ISSN 2582-838X).
- CCI undertook competition assessment of Model Concession Agreements (MCA) from NITI Aayog. Twenty one such agreements in various infrastructure and public service delivery sector were vetted from a competition lens.