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**COMPETITION COMMITTEE**

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

**-- 2022 --**

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

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## *India*

### 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 to provide a level playing field to the producers and make the markets work for the benefit of consumers.
2. This report focuses on the work carried out by CCI in 2021–22.

### 1. Changes to competition laws and policies, proposed or adopted

#### 1.1. The CCI (General) Amendment Regulations 2021<sup>1</sup> dated 6 September 2021

3. CCI amended the CCI (General) Regulations, 2009 on 6 September 2021. The said amendment inserted the following proviso: “*Provided that the Chairperson may also authorize other Officers of the Commission for the purpose*” to Regulation 14 (Power and functions of the Secretary), sub-regulation 3, after clause (a). The said regulation provides power to the Secretary to act as a nodal officer on behalf of the Commission for making or receiving all statutory communications, but with the amended proviso, the Chairperson may also authorise other officers for the purpose of making or receiving all statutory communications. The purpose of the same was to bring flexibility to the working of CCI.

#### 1.2. CCI (Procedure in regard to the transaction of business relating to combinations) Amendment Regulations 2022<sup>2</sup> dated 31 March 2022

4. CCI amended the combination regulation on 31 March 2022. With this amendment, under Schedule II, the earlier Form II was substituted with revised Form II. The amendment to Form II is part of a series of measures undertaken by CCI towards ease of doing business, reducing the compliance burden on parties, and making the assessment of the combination more objective and focused. The said amendment is aimed at removing duplicity and limiting the information requirement so that they remain focused and relevant to the objective of assessment of a merger, suitably clustering the information on a common subject, streamlining the flow of information for better navigation and appreciation of material furnished in the notification. Further, the template of the revised long form is based on the structure of the short form, so as to have modular formats of merger notification that would reduce the time and effort required to move from the short form to the long form. Further, revision in the long form has been undertaken without sacrificing the cause of merger regulation. Revised long form is intended to strike a balance between facilitation and enforcement functions and create a culture of compliance.

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<sup>1</sup> <https://www.cci.gov.in/legal-framwork/regulations/14/0>

<sup>2</sup> <https://www.cci.gov.in/legal-framwork/regulations/13/0>

## 2. Enforcement of competition laws and policies

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

5. 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 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 or consumers or the relevant market in its favour.

### 2.2. Most Active Sectors in 2021–22

6. CCI received 59 cases alleging contravention of antitrust provisions in 2021–22. 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 (2021–22)**

S. No.	Sector	2021–22
1.	Information Technology	9
2.	E-Commerce	5
3.	Health/Pharmaceuticals	5
4.	Real Estate	4
5.	Automobiles	4
6.	Petroleum/Gas	3
7.	Financial	3
8.	Alcoholic Beverages	3
9.	Food Processing	2
10.	I&B (Film/Entertainment/TV/Print Media)	2
11.	Railways	2
12.	Iron & Steel	2
13.	Public Procurement	2
14.	Transport	2
15.	Power	1
16.	Coal	1
17.	Sports	1
18.	Publishing	1
19.	Agriculture	1
20.	Mines & Minerals	1
21.	Dairy Products	1
22.	Defence Procurement	1
23.	Disinvestment	1
24.	Miscellaneous	2
<b>Total</b>		<b>59</b>

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

7. Nil.

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

#### 2.4.1. Case No. 31 of 2019 (CJ Darcl Logistics Ltd. vs. Dumper and Dumper Truck Union Lime Stone & Anr)

8. **Allegation:** CCI passed an order dated 7 February 2022 under the provisions of Section 27 of the Act after having found Dumper Truck Union to be in violation of Section 3 of the Act. CJ Darcl Logistics Ltd ('CJD Logistics'), the Informant, filed an information with CCI, alleging that the said union, operating in Sanu Mines area, Jaisalmer, did not allow CJD Logistics to carry out transportation work through its own vehicles and also made it mandatory to take vehicles along with drivers from the members of the union only, and that too, at a higher rate.

9. Furthermore, Dumper Truck Union and its members caused hindrances by not only not allowing the Informant's vehicles to execute the work but also threatening drivers and personnel of the Informant with bodily harm in case they tried to execute the work.

10. **Finding:** Based on evidence on record, CCI found Dumper Truck Union to have contravened the provisions of Section 3(3)(a) and 3(3)(b) read with Section 3(1) of the Act,

as the said union determined the prices of transportation services in a concerted manner and also limited and controlled the provision of such services.

11. **Direction:** Accordingly, the Commission directed Dumper Truck Union and Mr. Kunwar Raj Singh, then-Chairman of Dumper Truck Union, held liable in terms of the provisions of Section 48 of the Act, to cease and desist from indulging in practices that were found to be in contravention of the provisions of Section 3 of the Act.

12. The detailed order is available at

13. <http://164.100.58.95/sites/default/files/31-of-2019.pdf>

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

14. **Allegation:** Two separate information in Case Nos. 09/2017 and 36/2017 were filed by Mr. T.R. Chandran and People for Animals ('Informants') against the National Egg Co-ordination Committee (NECC) and Agro Corpex India Limited (ACIL), which were clubbed by the Commission based on substantial similarity of issues and allegations involved. It was, *inter alia*, alleged by the Informants that NECC and ACIL indulged in determining, declaring, and implementing egg prices, which were in contravention of Section 3(3)(a) of the Act.

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

16. **Findings of the DG investigation:** The DG found that NECC is an association of poultry farmers, consisting of three-tier committees, viz., the central committee/executive committee at the apex level, zonal committees at the middle level, and local committees at the bottom level, and was publishing egg prices on its official website on a daily basis. The DG investigation found that egg prices were declared through inter-zonal coordination, which took place via WhatsApp groups and weekly teleconferences. The DG also found that the stock and supply situation at different zones was monitored via different platforms of NECC to maintain a certain price, and this declared price was implemented through certain practices such as the imposition of penalties on poultry farmers. Thus, the DG concluded that the practice of determination and declaration of egg prices and implementation of these declared prices amounted to contravention of Section 3(3)(a) of the Act.

17. Further, the DG noted that NECC was engaged in limiting and controlling the production and supply of eggs through practices including early culling of layer birds, storage of eggs in cold stores, and restricting inter-zonal supply of eggs, which amounted to contravention of Section 3(3)(b) of the Act.

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

19. **Direction:** The Commission, thus, passed an order dated 14 January 2022, under Section 27 of the Act, holding NECC in violation of the provisions of Section 3(3)(a) read

with Section 3(1) of the Act and directed NECC to cease and desist, *inter alia*, from issuing any directives/threats that non-adherence to the declared egg prices shall have any penal/other (non-monetary) consequences upon any of its members.

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

21. The detailed order is available at

22. <http://164.100.58.95/sites/default/files/09-and-36-of-2017.pdf>

#### **2.4.3. Case No 16 of 2019 (M/S MaaMetakani Rice Industries vs. State of Odisha and Another)**

23. **Allegation:** The information in the case was filed by M/s. Maa Metakani Rice Industries ('Informant') against the State of Odisha and Odisha State Civil Supplies Corporation Ltd (OSCSC), (hereinafter collectively referred to as 'Opposite parties'/'OPs') alleging, *inter alia*, that OPs are directly/indirectly imposing unfair and discriminatory conditions in the purchase of services from the Informant and acting in contravention of the provisions of Section 4 of the Act.

24. **Finding:** The Commission directed investigation into the matter on 1 November 2019. During investigation, the DG examined the market for procurement of custom milling services of rice in the State of Odisha and found that OSCSC was dominant in the said relevant market. Consequently, the DG found OSCSC to have abused its dominant position in the relevant market, *inter alia*, by abruptly modifying the eligibility criteria in rabi season of KMS 2017–18 by issuing letter dated 22 November 2018, which was in the manner of delay/denial of the differential custody and maintenance charges for KMS 2017–18 which were already due to millers and deliberately delaying settlement of millers' dues.

25. The Commission agreed with the definition of relevant market as identified by the DG and found OSCSC to be dominant therein. Insofar as withholding of the milling and ancillary charges of the Informant by OSCSC was concerned, the Commission did not delve into the issue, as an insurance claim of the Informant and its denial was linked with the withholding of charges, which was a subject matter of litigation before another forum. Further, the Commission found that modification of eligibility criteria had not caused any serious injury prejudicing the millers, as there was nothing on record to indicate that the custom millers were unfairly affected or were absolutely foreclosed in their business activities on account of the same. The Commission further opined that non-payment of differential custody and maintenance charges pertaining to KMS 2017–18 was unfair, as OSCSC introduced unfair terms which were not in consonance with the provisions of Section 4(2)(a)(i) of the Act and agreed with the findings of the DG on that count. The Commission did not find the conduct of OSCSC to be an instance of abuse of its dominant position as far as communication of rates was concerned, since the rates were communicated on receipt of Provisional Costing Sheet (PCS) and approved by the Board of Directors/Government of Odisha before they were declared. Lastly, the Commission noted that the conduct of OSCSC in deliberately delaying settlement of dues of custom millers was abuse of its dominant position, since withholding legitimate dues without a justifiable reason is onerous on the millers, denudes them from reward of services rendered, and deprives them of timely financial resources to undertake work.

26. **Direction:** *Vide* order dated 5 August 2021, the Commission, thus, found the conduct of OSCSC to be in violation of the provisions of Section 4(2)(a)(i) of the Act and

directed it to desist from indulging in such practices which were found to be in contravention of the provisions of the Act.

27. The detailed order is available at

28. <http://164.100.58.95/sites/default/files/16-of-2019.pdf>

#### **2.4.4. Ref. Case No. 08/2013 (Ministry of Corporate Affairs vs. Apollo Tyres & Ors) Cartelisation by tyre manufacturers and their association**

29. **Allegation:** CCI initiated this matter on the basis of a reference received from the Ministry of Corporate Affairs (MCA), alleging that tyre companies, as mentioned above, and their association have violated the provisions of Section 3 of the Act.

30. **Finding:** On the basis of material available on record, *vide* its order dated 31 August 2018, CCI noted that tyre manufactures had exchanged price-sensitive data amongst them through the platform of Automotive Tyre Manufacturers' Association (ATMA) and had taken collective decisions on the prices of tyres. CCI also found that ATMA collected and compiled information relating to company-wise and segment-wise data on production, domestic sales, and export of tyres on a real-time basis. Accordingly, CCI held the five tyre manufacturers and ATMA guilty of contravention of the provisions of Section 3 of the Act, which prohibits anti-competitive agreements, including cartels, during 2011–12. Certain individuals of the aforesaid tyre companies and ATMA were held liable for the anti-competitive conduct of their respective companies/association in terms of the provisions of Section 48 of the Act.

31. **Direction:** CCI imposed penalties of INR 425.53 crores on Apollo Tyres, INR 622.09 crores on MRF Ltd., INR 252.16 crores on CEAT Ltd., INR 309.95 crores on JK Tyre, and INR 178.33 crores on Birla Tyres, besides passing a cease-and-desist order. In addition, a penalty of INR 0.084 crores was imposed on ATMA. ATMA was also directed to disengage and disassociate itself from collecting wholesale and retail prices through member tyre companies or otherwise.

32. The said order of CCI was kept in a sealed cover as per the directions of the Hon'ble Madras High Court, issued in Writ Appeal preferred by MRF Ltd. Thereafter, the Division Bench of the Hon'ble Madras High Court, *vide* an order dated 6 January 2022, dismissed the aforesaid Writ Appeal. Aggrieved with the same, the tyre companies preferred SLPs before the Hon'ble Supreme Court, which were dismissed *vide* its order dated 28 January 2022. The order was released on 7 February 2022.

33. The detailed order is available at

34. <https://www.cci.gov.in/antitrust/orders/details/765/0>

#### **2.4.5. Case No. 07/2018 (XYZ vs. Tamil Film Producers Council & Ors) Boycott by Tamil Film Producers Council and Telugu Film Chamber of Commerce**

35. **Allegation:** The information in the matter was filed against Tamil Film Producers Council (TFPC) and Telugu Film Chambers of Commerce (TFCC) and their office bearers, alleging collective boycott of the production, supply, exhibition, distribution, and technical development of Tamil and Telugu films in the State of Tamil Nadu and refusing to deal with several stakeholders in the film industry in Tamil Nadu.

36. **Finding:** On the basis of material available on record, including the DG Investigation Report, CCI observed that the conduct of TFPC and TFCC was actuated for bargaining better commercial terms for their members; however, such conduct was within the contours of the prohibited zone of the competition law, being an action relatable to



commercial matters, in contravention of the provisions of Section 3(1) read with Section 3(3)(b) of the Act.

37. **Direction:** CCI did not impose any monetary penalty upon the associations, considering the nature/duration of level of participation in the strike/boycott call and that movies continued to be released during the period of strike, but issued a firm warning that any such future conduct would be construed as recidivism, with attendant aggravated consequences. CCI directed the two associations to ensure that the platform of trade associations is not utilised for anti-competitive behaviour and to cease and desist from indulging in such conduct in future.

38. The detailed order is available at

39. <https://www.cci.gov.in/antitrust/orders/details/690/0>

#### ***2.4.6. Suo Motu 01/2019 (Alleged anti-competitive conduct by Maruti Suzuki India Limited in implementing discount control policy vis-a-vis dealers) Resale Price Maintenance by Maruti Suzuki***

40. **Allegation:** CCI took cognizance of this matter *suo motu*, based on an anonymous email, against Maruti Suzuki India Limited (MSIL) which, *inter alia*, alleged that MSIL's sales policy is against the interest of customers as well as the provisions of the Act.

41. **Finding:** CCI, based on investigation and other material available on record, found that MSIL not only imposed the Discount Control Policy on its dealers but also monitored and enforced the same by monitoring dealers through Mystery Shopping Agencies, imposing penalties on them and threatening strict action such as stoppage of supply, collecting and recovering penalty, and utilisation of the same. Such conduct of MSIL, which resulted in appreciable adverse effect on competition within India, was found by CCI to be in contravention of the provisions of Section 3(4)(e) read with Section 3(1) of the Act.

42. **Direction:** CCI imposed a penalty of INR200 crores upon MSIL besides passing a cease-and-desist order.

43. The detailed order is available at

44. <https://www.cci.gov.in/antitrust/orders/details/684/0>

#### ***2.4.7. Suo Motu 06/2017 (In Re: Alleged anti-competitive conduct in the Beer Market in India) Cartelisation by beer companies***

45. **Allegation:** This matter was initiated by CCI on the basis of a lesser penalty application received under the provisions of Section 46 of the Act from Crown Beers India Private Limited ('Crown Beers') and SABMiller India Limited ('SABMiller'), both ultimately held by Anheuser Busch InBev SA/NV ('Ab InBev'), for alleged cartelisation in relation to the production, marketing, distribution, and sale of beer in India.

46. **Finding:** CCI, after taking cognizance of the evidence collected during investigation and on the basis of the disclosures made in the lesser penalty applications, concluded that the three beer companies, United Breweries Limited(UBL), SABMiller, and Carlsberg India Private Limited (CIPL) indulged in cartelisation in the sale and supply of beer in various States and UTs in India, including through the platform of All India Brewers' Association (AIBA), which was also found to be actively involved in facilitating such cartelisation. The period of the cartel was held to be from 2009 to at least 10 October 2018. Further, several individuals of the four parties were also held by CCI to be liable in

terms of the provisions of Section 48 of the Act for the anti-competitive conduct of respective companies/association.

47. **Direction:** Giving reduction in penalty under the provisions of Section 46 of the Act of 100% to AB InBev and its individuals, 40% to UBL and its individuals, and 20% to CIPL and its individuals, CCI directed UBL and CIPL to pay penalties to the tune of approx. INR 750 crores and INR 120 crores respectively, besides passing a cease-and-desist order.

48. The detailed order is available at

49. <https://www.cci.gov.in/antitrust/orders/details/682/0>

#### **2.4.8. Case No. 41/2019 (GAIL (India) Limited v. PMP Infratech Private Ltd & Ors) Bid rigging in tender floated by GAIL**

50. **Allegation:** The information in the matter was filed by GAIL (India) Limited ('GAIL') against PMP Infratech Pvt. Ltd. and Rati Engineering alleging ('OPs') for bid rigging of tenders floated by GAIL for the restoration of well site located in the Ahmedabad and Anand areas of Gujarat.

51. **Finding:** CCI, on the basis of the information, DG Investigation Report, and other material available on record, found that the two firms were in regular touch with each other regarding the tender floated by GAIL and even after submission of their bids. Further, the bids of the two firms were submitted from the same IP address from the premises of PMP Infratech Pvt. Ltd.'s office, with a one-day gap. CCI found such conduct to have contravened the provisions of Section 3(3)(d) read with Section 3(1) of the Act.

52. **Direction:** CCI took a lenient view by taking cognizance of the mitigation pleas advanced by the parties, such as frequent lockdowns on account of the pandemic (COVID-19), and imposed a monetary penalty of INR 25 lakhs on PMP Infratech Pvt. Ltd., INR 2.5 lakhs on Rati Engineering, and INR 1 lakh and INR 50,000 on their respective individuals who managed and controlled the firms, besides passing a cease-and-desist order.

53. The detailed order is available at

54. <https://www.cci.gov.in/antitrust/orders/details/681/0>

#### **2.4.9. Ref. 07/2018 (FCI v. Shivalik Agro Poly Products Ltd & Ors) Bid rigging and cartelisation in tender floated by FCI**

55. **Allegation:** Reference in this matter was filed by the Food Corporation of India (FCI) against six firms alleging, *inter alia*, cartelisation in the bidding process for procurement of low density polyethylene covers (LDPE) during the period 2005–17 in contravention of the provisions of Section 3 of the Act.

56. **Finding:** On the basis of inquiry in the matter, CCI found these firms to have indulged in cartelisation in the supply of LDPE to FCI by means of directly or indirectly determining prices, allocating tenders, coordinating bid prices, and manipulating the bidding process. The evidence in the matter included e-mails, call detail records, and statements of the representatives of the firms.

57. **Direction:** Considering the fact that the firms were MSMEs and were already under stress due to the outbreak of the COVID-19 pandemic, CCI issued a cease-and-desist order against the firms found guilty of bid rigging and cartelisation in the said tenders floated by FCI.

58. The detailed order is available at

59. <https://www.cci.gov.in/antitrust/orders/details/654/0>

**2.4.10. Ref. 02/2016 (Mr. Rizwanul Haq Khan, Dy. Chief Material Manager, Office of the Controller of Stores, Southern Railway vs. Mersen (India) Pvt. Ltd. and Another) Bid rigging and cartelisation in tender floated by Railways**

60. **Allegation:** CCI initiated this case on the basis of a reference received from Southern Railway against Mersen (India) Pvt. Ltd. and Assam Carbon Products Ltd. ('OPs') alleging bid rigging in the tenders floated for the procurement of Hitachi Carbon Brushes.

61. **Finding:** On the basis of inquiry into the matter, CCI concluded that there was a clear exchange of thoughts and 'meeting of minds' to the extent of entering into an understanding and agreement between the two regarding the prices to be quoted and discussion regarding an increase in price before filing of bids across different tenders floated by the various divisions of the Indian Railways. CCI held that the OPs had indulged in cartelisation at least from November 2014 till 2019, in contravention of the provisions of Section 3(3) read with Section 3(1) of the Act.

62. **Direction:** Taking into account cooperation extended by the OPs during investigation and the fact that the firms were MSMEs, as well as the outbreak of the pandemic (COVID-19), CCI did not impose any monetary penalty and directed the parties and their respective individuals to cease from such cartel behaviour and desist from indulging in similar behaviour in the future.

63. The detailed order is available at

64. <https://www.cci.gov.in/antitrust/orders/details/651/0>

**2.4.11. Suo Motu 03/2018(In Re: Alleged cartelization in road construction work in the State of Uttar Pradesh) Bid rigging in tenders floated by UPPWD**

65. **Allegation:** CCI initiated this case *suo motu* after taking cognizance of possible instances of bid rigging by contractors engaged in road construction in response to various tenders floated by the State of Uttar Pradesh, on the basis of a report of the Comptroller and Auditor General titled "Performance Audit of Construction Management in Road Works".

66. **Finding:** Post-investigation, CCI observed that the material brought forth by the investigation is not sufficient to record any finding of contravention of the provisions of Section 3(1) read with Section 3(3) of the Act. CCI also stated that mere commonality of ownership of participating firms in itself is not sufficient to record any conclusion about bid rigging, in the absence of any material indicating collusion amongst such bidders. Accordingly, CCI ordered the matter to be closed forthwith, and accordingly, no directions were issued.

67. The detailed order is available at

68. <https://www.cci.gov.in/antitrust/orders/details/18/0>

**2.4.12. Suo Motu 05/2016 (In Re: Anti-competitive conduct in the paper manufacturing industry) Anti-competitive conduct in the paper manufacturing industry**

69. **Allegation:** This case was initiated *suo motu* by CCI, noting that certain paper manufacturers used the platform of the association to discuss and agree upon increase in prices of non-wood-based paper.

70. **Finding:** On the basis of material available on record, CCI held that 10 paper manufacturers indulged in cartelisation in fixing the prices of writing and printing paper by participating in the meetings convened under the aegis of the association and discussing prices and the roadmap for coordinated increase, besides monitoring the decisions taken in such meetings. The period of cartel was from September 2012 till March 2013.

71. **Direction:** CCI imposed a penalty of INR 5 lakhs each on the 10 paper manufacturers found guilty of cartelisation. However, considering the cooperation extended by one of the paper manufacturers as leniency applicant, CCI granted 100% reduction in the penalty amount imposed. Further, a penalty of INR 2.5 lakhs was imposed on the association. Apart from above, CCI also passed a cease-and-desist order against these manufacturers and the association.

72. The detailed order is available at

73. <https://www.cci.gov.in/antitrust/orders/details/642/0>

**2.4.13. *Suo Motu 10/2014 (In Re: Cartelisation by Shipping Lines in the matter of provision of Maritime Motor Vehicle Transport Services to the Original Equipment Manufacturers) Cartelisation by maritime transport companies***

74. **Allegation:** The case was initiated by CCI *suo motu*, on the basis of an application filed by Nippon Yusen Kabushiki Kaisha ('NYK Line'). Subsequently, Mitsui O.S.K. Lines Ltd. (MOL) and Nissan Motor Car Carrier Company (NMCC) also filed lesser penalty applications before CCI regarding cartelisation in the provision of maritime motor vehicle transport services to automobile original equipment manufacturers (OEMs) for various trade routes.

75. **Finding:** CCI, on the basis of material available on record, found that there was an agreement between NYK Line, Kawasaki Kisen Kaisha Ltd. ('K-Line'), MOL, and NMCC with the objective of enforcement of '*Respect Rule*', which implied avoiding competition with each other and protecting the business of the incumbent carrier with the respective OEM. Accordingly, CCI held all four opposite parties, i.e., NYK Line, K-Line, MOL, and NMCC, guilty of contravention of the provisions of Section 3 of the Act, from 2009–12. Further, 14 individuals of NYK Line, 10 individuals of K-Line, 6 individuals of MOL, and 3 individuals of NMCC were also held liable for the anti-competitive conduct of their respective companies in terms of the provisions of Section 48 of the Act.

76. **Direction:** CCI held all four opposite parties, i.e., NYK Line, K-Line, MOL, and NMCC, guilty of contravention of the provisions of Section 3 of the Act and imposed penalty @5% of the relevant turnover for each year of continuance of cartel. As three companies filed lesser penalty applications, CCI gave benefit of reduction in penalty by 100% to NYK Line and its individuals, 50% to MOL and its individuals, and 30% to NMCC and its individuals and accordingly, directed them to pay penalties to the tune of approx. INR 24.23 crores, INR 10.12 crores, and INR 28.69 crores, respectively, besides passing a cease-and-desist order.

77. The detailed order is available at

78. <https://www.cci.gov.in/antitrust/orders/details/636/0>

**2.4.14. *Suo Motu 02/2020 (In Re: Alleged anti-competitive conduct by various bidders in supply and installation of signages at specified locations of State Bank of India across India) Bid rigging in tender floated by the State Bank of India***

79. **Allegation:** The case was taken up by CCI *suo motu* upon a complaint alleging bid rigging and cartelisation in a tender floated by SBI Infra Management Solutions Pvt. Ltd. (SBIIMS) for the supply and installation of new signages/replacement of existing signages.

80. **Finding:** CCI, based on the DG Investigation Report and other material available on record, including the lesser penalty application filed by one of the parties, noted that there were e-mail communications containing worksheets that showed the auction sequence exchanged between the parties in relation to the impugned tender. CCI found that there was an agreement amongst the parties which resulted in geographical market allocation as well as bid-rigging in the said tender of SBI. CCI held seven parties and their nine individuals to be guilty of contravention of the provisions of Act.

81. **Direction:** Considering that most of the parties were MSMEs, and due to the ongoing pandemic (COVID-19), CCI took a lenient view while levying monetary penalties and decided to impose penalties upon the parties and their individuals @1% of their respective average turnover and average incomes, respectively, and also granted a reduction in penalty by 90% to the leniency applicant and its individuals. Accordingly, monetary penalties in the range of around INR 6 lakhs to INR 52 lakhs were payable by the parties, and around INR 2000 to INR 2.44 lakhs were payable by their respective individuals. Apart from the above, CCI also passed a cease-and-desist order against the parties.

82. The detailed order is available at

83. <https://www.cci.gov.in/antitrust/orders/details/633/0>

**2.5. Summary of activities of courts (Supreme Court and High Court) (2021–22, i.e., 1 April 2021–31 March 2022)**

**2.5.1. *Case No. 40/2019 (Flipkart Internet Private Limited vs. CCI and Amazon Seller Services Private Limited vs. CCI; SLP No. 11558/2021, 11615/2021—Decided on: 9 August 2021 by Supreme Court)***

84. **Facts:** CCI had directed an investigation into alleged anti-competitive practices and conduct, such as deep discounting, preferential listing, and sale of private label brands through preferential sellers and exclusive tie-ups. Upon challenge, the Single Judge Bench Hon'ble High Court of Karnataka at Bengaluru, *vide* order dated 11 June 2021, dismissed the Writ Petition and stated that, as per the judgement of the Hon'ble Supreme Court of India in *CCI vs. Steel Authority of India Ltd. and Anr. (2010) 10 SCC 744*, an order under Section 26(1) of the Act passed by the Commission is an 'administrative direction' to one of its wings departmentally and without entering into any adjudicatory process. The order dated 11 June 2021 was further challenged by way of Writ Appeal in WA No. 562/2021 and 563/2021 before the Division Bench of the High Court of Karnataka. The Hon'ble High Court, *vide* order dated 23 July 2021, dismissed the Writ Appeals as being devoid of merits and substance and opined that petitioners should welcome the enquiry by CCI, and the Writ Appeals filed by them are nothing but an attempt to ensure that an action initiated by CCI does not attain finality.

85. **Question adjudicated:** Whether the investigation ordered by CCI was correct.

86. **Observation:** The Hon'ble Supreme Court, *vide* order dated 9 August 2021, was pleased to dismiss the Special Leave Petitions in favour of CCI, finding no reason to interfere with the impugned order, and upheld the order passed by the High Court of Karnataka dismissing the Writ Appeals of the petitioners.

87. **Decision:** SC upheld the order passed by the High Court.

88. For the detailed judgement, please visit:

89. <http://surl.li/djzqc>

**2.5.2. Case No. 24/2012 (CCI vs. State of Mizoram & Ors; Civil Appeal Nos. 10820-10822/2014—Decided on: 19 January 2022 by Supreme Court)**

90. **Facts:** CCI directed investigation against M/s N. V. International, Summit Online Trading Solutions Pvt. Ltd., M/s. Teesta Distributors, and E-Cool Gaming Solutions (P) Ltd. upon the allegation that they had cartelised and entered into bid rigging and a collusive bidding process, thereby violating Section 3(1) read with Section 3(3) of the Act and also caused grave financial loss to the State of Mizoram. Three Writ Petitions were filed before the Gauhati High Court on the grounds, *inter alia*, that lotteries were not covered by the Act, and thus, CCI did not have the jurisdiction to conduct an inquiry under Section 26(1) of the Act. The Gauhati High Court, while deciding the said three petitions, held that the lottery activity being in the nature of *res extra commercium* could not be covered by the Act, and consequently, CCI did not have jurisdiction to entertain the complaint against the same.

91. **Question adjudicated:** Whether the CCI have jurisdiction over lotteries business.

92. **Observation:** The Hon'ble Supreme Court, while allowing the appeals preferred by CCI, held that there appeared to be a mis-application by the High Court in the interplay of the two Acts, i.e., the Act and the Lotteries (Regulation) Act, 1998 ('Regulation Act') and that the concern of CCI was not at all with the carrying out, regulation, or prohibition of the lottery business as was governed by the Regulation Act. Rather, the concern was limited to the role assigned to CCI under the Act and was limited to examining any perceived bid rigging in the tendering process for the appointment of selling agents and distributors for the lottery business. There was no conflict in the interplay of the two Acts as the limited scrutiny was to examine the mandate of Section 3(1) read with Section 3(3) of the Act.

93. It was also held by the Hon'ble court that the lotteries may be a regulated commodity and may even be *res extra commercium*. That would not take away the aspect of something which is anti-competition in the context of the business related to lotteries. The court further observed that the definition of 'service' under Section 2(u) of the Act is an expansive one, including "service of any description" which is made available to potential users. The purchaser of a lottery ticket is a potential user, and a service is being made available by the selling agents in the context of the Act.

94. Further, the court held that the lottery business can continue to be regulated by the Regulation Act. However, if, in the tendering process, there is an element of anti-competition which would require investigation by CCI, that cannot be prevented under the pretext of the lottery business being *res extra commercium*, more so when the State government decides to deal in lotteries. Also, it was held that the intervention by the High Court was extremely premature; it ought to have waited for CCI to come to a conclusion, but the CCI proceedings have been brought to a standstill. The High Court ought not proceed in the manner and the direction it sought to proceed. It was also held that the process initiated from filing of complaint onwards—inquiry by CCI, *prima facie* opinion

and direction to investigate, the Director General's (DG) adverse findings, and issuance of a notice by CCI giving an opportunity to the affected parties to place their stand before it—ought to have been permitted to conclude with the right available to the affected parties to avail of the appellate remedy under Section 53B of the Act.

95. **Decision:** The Hon'ble Supreme Court set aside the order passed by the Gauhati High Court and allowed CCI to proceed in accordance with law.

96. For the detailed judgement, please visit:

97. <http://surl.li/djzqo>

**2.5.3. SuoMotu Case No. 1/2021 ( WP Nos. 4378 & 4407 of 2021; WhatsApp LLC vs. CCI & Anr. and Facebook Inc. vs. CCI—Decided on: 22 April 2021 by Delhi High Court)**

98. **Facts:** CCI ordered an investigation under Section 26(1) of the Act against Facebook and WhatsApp LLC in connection with WhatsApp's 2021 update to its Terms and Privacy Policy ('2021 Update'). CCI observed that the impugned conduct of data-sharing by WhatsApp with Facebook apparently amounts to degradation of non-price parameters of competition, viz., quality, which results in objective detriment to consumers without any acceptable justification and that such conduct *prima facie* amounts to imposition of unfair terms and conditions upon the users of WhatsApp messaging app, in violation of the provisions of Section 4(2)(a)(i) of the Act.

99. Aggrieved by the same, WhatsApp LLC and Facebook Inc. moved the Delhi High Court, challenging the *prima facie* order passed by CCI, directing DG, CCI, to cause an investigation to be made into the 2021 Update.

100. **Question adjudicated:** What is the nature and scope of the order passed under Section 26(1) of the Act.

101. **Observation:** The Hon'ble Delhi High Court with regard to the scope and ambit of an order passed under Section 26(1) of the Act relied upon the *CCI vs. SAIL* judgement of the Supreme Court. The court observed that, at the 26(1) stage, CCI was merely to form a *prima facie* opinion for directing an investigation to be carried out by the DG; it is not to give any final conclusions on the merit of the violation alleged or on the defence of the petitioner(s) herein. The order passed under Section 26(1) of the Act is purely administrative in nature and does not entail any civil. In fact, the 26(1) order could have been passed without notice or granting an opportunity of hearing to the petitioner(s). Further, the court held that, though CCI is to give reasons in the 26(1) order, it need not deal with all the submissions of the petitioner(s) in detail, as it is not to give any conclusive findings but is to form only a *prima-facie* opinion to order an investigation.

102. With regard to the pendency of a similar issue before other fora, the Court observed that there cannot be an inviolable rule that, merely because an issue is pending before the Supreme Court or the High Court, CCI would get divested of the jurisdiction that it otherwise possesses under the Act. The court further held that the reliance upon the Hon'ble Supreme Court's judgement in *Bharti Airtel Ltd.* in this regard was ill-founded. In the *Bharti Airtel Case*, the Hon'ble Supreme Court was considering the scope and ambit of two specialised regulators, i.e., CCI and TRAI, whereas, in the present case, the issue as to whether the 2016 Update/2021 Update announced by WhatsApp in any manner infringes upon the right of privacy of users guaranteed under Article 21 of the Constitution of India is pending adjudication before the Supreme Court and the High Court. The question regarding the 2016 Update/2021 Update not giving an option to optout is also an issue before the Supreme Court and the High Court. However, the same cannot necessarily mean

that, during pendency of those petitions, CCI is completely denuded of the jurisdiction vested in it under the Act or that it must necessarily await the outcome of such proceedings.

103. Upon the impleadment of Facebook in the investigation, the Hon'ble court upheld the order passed by CCI, wherein it was shown that Facebook shall be an integral part of such investigation, and the allegations in relation to sharing of data by WhatsApp with Facebook would necessarily require the presence of Facebook in such an investigation.

104. **Decision:** Accordingly, the order passed by CCI was upheld, and the petitions were disposed of.

105. For the detailed judgement, please visit:

106. [http://164.100.69.66/jupload/dhc/NAC/judgement/24-04-2021/NAC22042021CW43782021\\_153656.pdf](http://164.100.69.66/jupload/dhc/NAC/judgement/24-04-2021/NAC22042021CW43782021_153656.pdf)

**2.5.4. Reference Case No. 8/2013 (Writ Appeal No. 529 of 2018; M/s MRF Ltd. vs. MCA, CCI & Ors.—Decision dated 6 January 2022 by Madras High Court)**

107. **Facts:** CCI ordered an investigation under Section 26(1) of the Act against domestic tyre manufacturers (M/s Apollo Tyres Ltd., M/s MRF Ltd., M/s. CEAT Ltd., M/s J. K. Tyres & Industries Ltd., and Birla Tyres) upon the allegations that, upon the increase in the prices of natural rubber, tyre prices were increased in a concerted manner by them; however, when the price of natural rubber decreased, tyre prices were not reduced by the domestic major tyre manufacturers and, as such, they indulged in cartelisation and price parallelism under the guidance of their association, Automotive Tyre Manufacturers' Association (ATMA). It was also alleged that they were seeking tariff and non-tariff barriers through ATMA to strengthen their control on the domestic market. Writ Petition filed by MRF against the said order of investigation was dismissed by the Ld. Single Judge without expressing any view on the merits.

108. **Question adjudicated:** Whether non-compliance of regulations would invalidate the proceedings commenced by CCI.

109. **Observation:** The Division Bench held that a conjoint reading of Regulation 15(3), Regulation 15(5), and Regulation 40 of CCI (General) Regulations, 2009 and Section 15(c) of the Act would indicate the legislative intent that the non-compliance of regulations in each case shall not invalidate the proceedings initiated by the Commission.

110. The Division Bench further held that the Ld. Single Judge was right to hold that the Writ Court cannot interfere with the preliminary order directing investigation on the ground of procedural lapses, either in making the reference or entertaining the same, and that the order passed by the Commission under Section 26(1) of the Act is not amenable to writ jurisdiction as it does not affect the rights of the parties nor does it effectively determine any right or obligation of the parties to the lis.

111. The court also held that the principles of res judicata may not apply, as the Act permits CCI to initiate action on the complaint of cartelisation independently for each year. It was also held that the filing of a Writ Petition before the Delhi High Court by ATMA during the pendency of the appeal before this Division Bench, Madras High Court, amounted to forum shopping.

112. **Decision:** The Division Bench of the Hon'ble Madras High Court, while dismissing the appeal, upheld the order passed by the Ld. Single Judge upholding the CCI order of investigation against domestic tyre manufacturers.

113. For the detailed judgement, please visit:



114. <https://www.mhc.tn.gov.in/judis/index.php/casestatus/viewpdf/628016>

## 2.6. Merger and acquisitions

115. The provisions of the Act for merger regulation of combinations were brought into effect on 1 June 2011. Sections 5 and 6 of the Act require mandatory notification to CCI of all acquisitions, mergers, and amalgamations that exceed the specified asset-to-turnover thresholds set out in the Act (known as ‘combinations’). A combination must be notified to CCI within prescribed timelines<sup>3</sup> 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.

116. The Green Channel scheme, introduced in August 2019, which provided for granting automatic approval to certain combinations, has seen an increasing trend, from ~19% in FY 2020–21 to ~27% in FY 2021–22. Since its introduction, 51 combination<sup>4</sup> notices have been filed under Green Channel, with 24 combination notices in FY 2021–22 under Green Channel.

## 2.7. Statistics of merger filings to CCI

117. Till 31 March 2022, CCI received 916 combination notices/cases, of which 908 cases have been disposed and 08 are pending. Sector-wise distribution of combination notices received during the year has been presented in Table 2.

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<sup>3</sup>Exemption from the mandatory timelines extended vide MCA Notification: published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (ii) vide S.O. 2039(E), dated the 16<sup>th</sup> March, 2022.

<sup>4</sup>Till 31<sup>st</sup> March, 2022.

**Table 2. Sector-wise distribution of combination notices received during the year 2021–22**

S. No.	Sector	2021–22
1	Finance and Markets	14
2	Power & Power Generation	9
3	Information Technology & Services	8
4	Pharmaceuticals & Healthcare	7
5	E-Commerce/Digital	7
6	Logistics	6
7	Airports/Airlines/Infrastructure	4
8	Mining & Metals	4
9	Textile	4
10	Auto & Auto-Components	3
11	Food & Refined Oil	3
12	Cement	2
13	Radio Taxi Marketplace	2
14	Telecom	2
15	Water Supply and Waste Management	2
16	Ports	2
17	PVC & Chemicals	1
18	Group Restructuring	1
19	Fantastic Sports	1
20	Shipping	1
21	Steel Products	1
22	Construction Equipment	1
23	Dry Cell & Batteries	1
24	Fertilisers	1
25	Rubber	1
26	Wholesale & Retail Trading & Operation of School	1
27	Other Professional, Scientific, and Technical Activities	1
Total		90

## 2.8. Some important orders of CCI under Sections 5 and 6 in 2021–22

### *2.8.1. CCI approves acquisition of 100% of the issued and paid-up equity share capital of Principal Asset Management, Principal Trustee Company, and Principal Retirement Advisors by Sundaram Asset Management*

#### *Combination Registration No. C-2021/02/816*

118. On 5 April 2021, the Commission approved the combination filed by Sundaram Asset Management Company Limited (SAMC/‘Acquirer’) in relation to the proposed acquisition of 100% of the issued and paid-up equity share capital of: (i) Principal Asset Management Private Limited (PAMPL); (ii) Principal Trustee Company Private Limited (PTCPL); and (iii) Principal Retirement Advisors Private Limited (PRAPL) by SAMC. Pursuant to the proposed combination, the schemes of the Principal Mutual Fund (PMF) shall be transferred to Sundaram Mutual Fund (SMF), and the trusteeship and management of the PMF schemes shall be transferred to Sundaram Trustee Company Limited (STCL) and SAMC, respectively.

119. SAMC, a public limited company incorporated in India, is a wholly owned subsidiary of Sundaram Finance Limited (SFL). It is the investment manager for SMF and manages funds that cater to the investment needs of investors with different risk, reward, and liquidity preferences. SFL, along with its affiliates, is referred to as ‘SFL Group’. It is mentioned that the Targets are indirect wholly owned subsidiaries of Principal Financial Services Inc. USA (sponsor of Principal Mutual Fund) which, in turn, is a subsidiary of Principal Financial Group, Inc., a US publicly traded company.

120. The proposed combination related to the market for mutual funds in India. At the broad level, the business of the parties exhibited overlap in the market for mutual funds in India and at narrow level in the markets for (i) equity-oriented mutual fund schemes in India; (ii) debt-oriented mutual fund schemes in India; and (iii) hybrid mutual fund schemes in India. Since SFL Group (through SFL) is also engaged in the market for distribution of mutual funds in India, the business of the parties also exhibited a vertical relationship between SFL Group and the Targets, with Targets present in the upstream market for mutual funds in India and SFL Group present in the downstream market for mutual funds distribution.

121. The Commission observed that the combined market shares of the parties, both at the level of broad relevant market as well as at the level of each of the narrow relevant markets were insignificant, with negligible incremental market share. Further, with respect to the vertical relationship, the Commission noted that the presence of the parties at both the upstream as well as downstream levels was not significant to raise any competition foreclosure concerns in India. Thus, the Commission was of the opinion that the proposed combination is not likely to have an appreciable adverse effect on competition in India and approved the same.

***2.8.2. CCI approves acquisition of up to 64.3% of total share capital of Supermarket Grocery Supplies Private Ltd (SGS) and SGS’s sole control over Innovative Retail Concepts Private Limited by Tata Digital Ltd.***

*Combination Registration No. C-2021/03/822*

122. On 28 April 2021, the Commission approved the combination filed by Tata Digital Limited (TDL) in relation to acquisition of up to 64.3% of the total share capital of Supermarket Grocery Supplies Private Ltd (SGS) by TDL through a combination of primary and secondary acquisitions (‘Transaction 1’). Further, as was stated in the notice, SGS may acquire sole control over Innovative Retail Concepts Private Limited (IRC) (‘Transaction 2’). Transaction 1 and Transaction 2 together constituted the ‘Proposed Combination’.

123. TDL is a wholly owned subsidiary of Tata Sons Private Limited (‘Tata Sons’) which, in turn, is the ultimate holding company of the entities belonging to Tata group. TDL is engaged in the business of providing technology services related to identity and access management, loyalty program, offers, and payments. Tata group, through its group entities, is engaged, *inter alia*, in the business of: (i) business-to-business (B2B) sale of food and grocery products, household products, and personal and beauty care products (‘Relevant Products’) in India; (ii) business-to-consumer (B2C) sale of relevant products in India; and (iii) manufacture and sale of certain packaged food and grocery products in India. It was also submitted that, over a period of time, TDL proposes to enable a common technology platform that would provide various products and services of various Tata brands and select non-Tata brands.

124. SGS is a company incorporated in India and is engaged in online B2B sales of the Relevant Products in India through business.bigbasket.com. IRC is a company incorporated in India and is engaged in online B2C sales of the Relevant Products in India and operates the website www.bigbasket.com and related mobile applications.

125. In relation to horizontal overlaps, it was noted that the business activities of certain Tata group entities, namely, Trent Ltd., which is engaged in the B2B and B2C sales of Relevant Products in India, and Tata Consumer Products Limited and Tata Smartfoodz Ltd., which are engaged in the manufacture and sale of packaged food and grocery products, exhibited overlaps with the business activities of SGS and IRC.

126. With respect to vertical relationship, it was noted that, on account of existing supply arrangements between Tata group entities and SGS, i.e., procurement of products in the food and grocery segment from Tata group entities by SGS for B2B sales, there exists a vertical relationship between Tata group entities at the upstream level, i.e., for manufacture and sale of food and grocery products, and SGS at downstream level, i.e., market for B2B sales. Additionally, it was proposed the parties wished to enter into a Business Services Agreement that contemplates the provision of certain technology services by TDL to IRC. In this regard, it was submitted that TDL is present at the upstream level, i.e., 'Market for provision of identity & access management and digital payment services' and IRC is present at the downstream level, i.e., 'Market for B2C sales of Relevant Products in India'.

127. The Commission decided to leave the delineation of the relevant market open; however, it was noted that the combined as well as incremental market shares of the parties in each of the relevant B2B markets and relevant B2C markets identified by the parties were not significant to raise any competition concerns. Further, in relation to vertical relationship, it was noted that the presence of parties at each level in the vertical relationship was not significant to raise any competition foreclosure concerns at any level.

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

### ***2.8.3. CCI approves the proposed acquisition of certain stake by Think & Learn Private Limited (BYJU'S) in Aakash Educational Services Limited (AESL), followed by a merger of the two entities***

#### ***Combination Registration No.C-2021/04/831***

129. On 7 June 2021, the Commission approved the proposed combination pertaining to the acquisition of approximately 70% of equity shareholding of AESL by BYJU'S, followed by a merger of AESL with BYJU'S. As a consequence, BYJU'S shall effectively acquire sole control over AESL.

130. BYJU'S, a private limited company incorporated in India, offers a technology-based (online) education platform for primary and secondary school subjects, overseas and domestic test preparatory coaching services for entrance examinations for engineering, medical, etc.

131. AESL, a public limited company incorporated in India, provides curriculum-based coaching for K-12 students and test-preparatory services for various competitive examinations (such as, engineering, medical, Olympiads, National Talent Search Examination, etc.). AESL offers its services through multiple modes, such as classroom-based coaching, online learning, distance learning, and hybrid learning programmes.

132. The proposed combination pertained to the education sector in India, which was segmented into formal and non-formal segments by the parties. Both parties were present only in the non-formal education segment in India. At the narrower level, parties exhibited overlaps in the test-preparatory coaching services for medical examinations, test-preparatory coaching services for engineering examinations, coaching services for classes 1 to 7, coaching services for classes 8 to 10, and coaching services for the commerce stream for classes 11 to 12.

133. It was noted that the combined market share of the parties and the incremental market share in all segments/sub-segments is less than 10%. Further, the non-formal education sector in India is characterised by the presence of several other players, which will continue to pose significant competitive constraints.

134. Based on the foregoing, the Commission approved the proposed combination under sub-section (1) of Section 31 of the Act.

#### ***2.8.4. CCI approves acquisition of Ingram Micro Inc. together with its parent companies and subsidiaries by Imola Acquisition Corporation***

##### *Combination Registration No.- C-2021/03/820*

135. On 7 May 2021, the Commission approved the proposed combination in relation to acquisition of 100% shareholding and sole control of Ingram Micro Inc. together with (i) its parent companies, GCL Investment Management Inc. and GCL Investment Holdings Inc., and (ii) its direct and indirect subsidiaries (collectively referred to as ‘Ingram Micro’) by Imola Acquisition Corporation (‘Imola’/‘Acquirer’).

136. Imola was created specifically for the purpose of proposed combination. It is wholly owned by certain entities that are directly or indirectly managed and/or advised by Platinum Equity Advisors, LLC and ultimately controlled by Platinum Equity, LLC. Platinum Equity Group is a global firm specialising in the merger, acquisition, and operation of companies that provide services and solutions to customers in a broad range of businesses, including information technology, telecommunications, logistics, metal services, manufacturing, and distribution.

137. Ingram Micro is a US-headquartered company that specialises in technology distribution and logistics, cloud solutions, and e-commerce supply chain services. Distribution chain of Ingram Micro extends to North America, Europe, Middle East and Africa, Latin America, and Asia-Pacific, with local offices in several countries. Ingram Micro is engaged in the wholesale distribution of IT products, consumer electronics, mobility products, and related services in India.

138. Activities of the parties exhibited vertical interface through Vertiv Energy Private Limited (‘Vertiv’), in which Platinum Equity Group has shareholding. Vertiv is engaged in the manufacture and supply of power management products, thermal management products, and infrastructure management and solutions and made sales through the distribution channel of Ingram Micro in India. However, the vertical relationship was not significant enough to raise any competition concerns in India.

### ***2.8.5. CCI approves acquisition of stake in Adani Krishnapatnam Port Limited by Adani Ports and Special Economic Zones Limited***

*Combination Registration No. C-2021/04/828*

139. On 17 May 2021, the Commission approved the acquisition of 25% shareholding in Adani Krishnapatnam Port Limited ('Target') by Adani Ports and Special Economic Zones Limited (APSEZ/'Acquirer'). The Commission received the notice on 6 April 2021, under Section 6(2) of the Act given by the Acquirer, which already holds 75% shareholding in the Target.

140. The Acquirer is a private multi-port operator which provides integrated port infrastructure services. The facilities of the Acquirer are said to be equipped with the latest infrastructure capable of handling large vessels. Besides these, the Acquirer has a fleet of support vessels and equipment, such as multi-utility crafts, survey vessels, floating cranes, jack-up barges, etc.

141. The Target is engaged as a developer and operator of an all-weather, deep-water multi-purpose port located at Krishnapatnam, Andhra Pradesh, under a 30-year (extendable for a period of another 20 years in two blocks of 10 years each) Build-Operate-Share-Transfer concession from the Government of Andhra Pradesh. It provides integrated cargo handling and marine services including but not limited to pilotage, berth hire, wharfage, stevedoring, railway rake loading, transporting, storing, and other activities within the port premises.

142. Earlier acquisition of 75% of the Target by the Acquirer was approved by the Commission, wherein it was found that the combination does not cause any competition concerns in the affected markets. The proposed combination results in joint control to sole control of the Target. Thus, the findings of the Commission regarding the factors governing the assessment of the proposed combination and the earlier acquisition largely remained the same. Therefore, it is observed that, in line with the assessment in the earlier acquisition, the proposed combination is also not likely to raise any competition concerns.

### ***2.8.6. CCI approves acquisition of Avana Logistek Limited, Transworld Feeders Private Limited, and Transworld Feeders FZCO by Unifeeder ISC FZCO***

*Combination Registration No. C-2021/04/829*

143. On 2 June 2021, the Commission approved the proposed combination in relation to (i) acquisition of 100% of the share capital of AvanaLogistek Limited ('Avana') by Unifeeder ISC FZCO ('Unifeeder'/'Acquirer'); (ii) acquisition of 100% of the equity share capital of Transworld Feeders Private Limited (TFPL) by Unifeeder; and (iii) acquisition of 99.99% equity share capital of Transworld Feeders FZCO (TWF), leading to an indirect acquisition of 100% of the share capital of Transworld Shipping Agencies Private Limited (TSAPL). The proposed combination also envisaged two interconnected transactions: (i) acquisition of 100% equity capital of TFPL by Shreyas Shipping and Logistics Limited (SSLL), followed by a transfer domestic coastal and export and import (EXIM) feeder shipping business of SSLL to TFPL; and (ii) acquisition of 17% stake in Unifeeder by Transworld Holdings Limited ('Transworld') as part consideration.

144. Unifeeder is indirectly held by DP World and Shimin Holding Pte. Limited ('Shimin'). DP World is, in turn, a wholly owned subsidiary of DP World Limited (DPW) which, in turn, is indirectly and wholly owned by the Government of Dubai. In India, Unifeeder provides EXIM shortsea feeder services and EXIM shortsea NVOCC services

through its subsidiaries FeedertechPte. Limited and Perma Shipping Line Pte Limited, respectively.

145. DPW Group operates terminal ports, container freight stations, private freight terminals with internal container depot (ICD), free trade warehouse zones, cold chain facilities, non-container surface express, and third-party logistics (3PL) services, and provides container rail transport in India. Shimin does not carry out any activity besides holding a stake in the Acquirer.

146. Activities of the Transworld group include ship owning (container, multi-purpose vessels, and bulk carriers), feeder services, NVOCC services, project logistics, supply chain management, ship management, shipping agencies, freight forwarding, and information technology. Avana is an integrated logistics solutions provider offering customised and end-to-end solutions. TSAPL provides port agency and husbandry services to its group entities.

147. Activities of the parties exhibited horizontal overlap in the segment of shortsea EXIM container shipping and cold chain activities. Considering the market position of the parties, volume handled, and presence of the competitors, the Commission observed that the horizontal overlaps are not likely to raise competition concerns. Activities of the DPW group and Targets also exhibit vertical interface. The Commission observed that vertical interface is not such as to raise competition concerns.

#### ***2.8.7. CCI approves acquisition of Goa plant of Zuari Agro Chemicals Limited by Paradeep Phosphates Limited***

*Combination Registration No. C-2021/05/840*

148. On 24 June 2021, the Commission approved the proposed combination in relation to acquisition of plant located at Zuarinagar, Goa ('Goa Plant') belonging to Zuari Agro Chemicals Limited (ZACL/'Seller') by Pradeep Phosphates Limited (PPL/'Acquirer').

149. PPL is engaged mainly in the manufacture and sale of non-urea/complex fertilizers, namely, diammonium phosphate (DAP) and NPK fertilisers. The company also imports and sells Muriate of Potash (MoP). PPL is owned by Zuari Maroc Phosphates Pvt. Ltd. (ZMPL) and the Government of India. ZMPL is a joint venture between ZACL and OCP S.A. (OCP). OCP is largely owned by the Government of Morocco.

150. ZACL belongs to the Adventz Group. The Adventz Group is engaged in agribusiness through ZACL, Gobind Sugar Mills Limited, PPL and Mangalore Chemicals & Fertilizers Limited.

151. Activities of the parties exhibit horizontal overlap in the segment of non-urea fertilisers, which includes DAP, MoP, and NPK. At the all-India level, the combined market shares of parties in the non-urea fertilisers segment and its overlapping sub-segments were less than 10%, with incremental market share being less than 5%. Further, for states where the activities of PPL and Target exhibit horizontal overlap, the combined market shares of parties in the non-urea fertilisers segment and its overlapping sub-segments was around 30% or less, with incremental market share being less than 5%. The Commission observed that Acquirer, Seller, and ZMPL are already under control of the Adventz Group. As a result of the proposed combination, OCP would acquire control over the target business through ZMPL. OCP does not have a stake, except through ZMPL, in any of the business operating in India that exhibit a horizontal overlap with the Target business.

152. OCP is engaged in the supply of DAP, rock phosphate, and phosphoric acid to India, which deserved competition assessment for vertical interface with Target business. The Target business vertical does not consume rock phosphate. Phosphoric acid is supplied by OCP to the Seller for a very small proportion of the total supplies made by OCP to India. Further, the phosphoric acid requirement of the Target business is not significant vis-à-vis total market size. This was a similar case for DAP. Thus, the Commission observed that the proposed combination is not likely to cause foreclosure concerns.

***2.8.8. CCI approves proposed acquisition by Zomato Limited ('Zomato') of approximately 9.3% stake in Grofers India Private Limited ('Grofers India') and Hands on Trades (HoT)***

*Combination Registration No. C-2021/06/847*

153. On 13 August 2021, CCI approved Zomato's acquisition of approximately 9.3% stake in Grofers India and HoT.

154. Zomato ('Acquirer') is a public limited company primarily operating in the food services market. It provides a platform that connects customers, restaurant partners, and delivery partners, serving their multiple needs. Zomato's subsidiary, Zomato Internet Private Limited, also operates Hyperpure, which largely supplies fresh and high-quality ingredients (such as vegetables, fruits, meats, etc.) primarily to Zomato's restaurant partners.

155. Grofers India is a private limited company operating an e-commerce marketplace in India. It provides a platform that acts as a facilitator between third-party sellers of various products (such as grocery, fruits and vegetables, bakery items, personal care, health and hygiene, pet care, baby care, etc.) and potential buyers of goods.

156. HoT is a private limited company engaged in the business of B2B wholesale trading with third-party merchants; contract manufacturing of food products, grocery, and other goods for the purpose of onward sale on a wholesale basis; and providing warehousing services, including storage of grocery goods and food-related products, to third-party merchants.

157. Grofers International Pte Ltd ('Grofers International') is the holding company of Grofers India and HoT. It is incorporated in Singapore and operates as an investment holding company (Grofers International, Grofers India, and HoT are collectively referred to as 'Target').

158. The Acquirer and the Target are both active in the overall market for the supply of groceries, household items, general merchandise, personal hygiene products, fruits, and vegetables in India and the narrower segment of B2B supply of groceries, household items, general merchandise, personal hygiene products, fruits, and vegetables in India.

159. The relevant markets were identified as: (i) the market for supply of groceries, household items, general merchandise, personal hygiene products, fruits, and vegetables in India ('Broad'); (ii) B2B supply of groceries, household items, general merchandise, personal hygiene products, fruits, and vegetables in India ('Narrower'); (iii) market for supply of groceries, fruits, and vegetable in India ('Narrowest'); and (iv) market for services provided by online platforms for the sale of groceries, household items, general merchandise, personal hygiene products, fruits, and vegetables in India ('Online Marketplace'). The Commission decided to leave the delineation of the relevant market open. It was observed that the combined market shares of the parties in Broad, Narrower, as well as Narrowest market were less than 1%. Though the combined market share of the



parties in Online Marketplace was in the range of 10–15%, the incremental market share was less than 1%. Also, no significant vertical relationships were found. Thus, the Commission was of the opinion that the proposed combination is not likely to have any appreciable adverse effect on competition in India and hence, approved the same.

**2.8.9. CCI approves proposed combination involving an acquisition of 71.25% shareholding of ASK Investment Managers by BCP TopCo ('Blackstone Group')**

*Combination Registration No. C-2021/10/877*

160. On 15 November 2021, the Commission approved a proposed combination involving the acquisition of up to 71.25% shareholding (on a fully diluted basis) in ASK Investment Managers Limited ('Target') from various selling shareholders by BCP TopCo XII Pte Ltd ('Acquirer').

161. The Acquirer is a newly created entity incorporated in Singapore. It is controlled by funds advised and/or managed by affiliates of Blackstone Inc. (collectively, 'Blackstone Group'). Blackstone Inc. is a global alternative asset manager headquartered in the US. Blackstone Group is active in the financial services sector in India through portfolio companies.

The Target is an asset and wealth management company incorporated in India. It submitted in the notice that the Target is the ultimate holding entity which is engaged in the business of providing financial services, directly and through its associate and subsidiary companies.

162. The proposed combination relates to the acquisition of up to 71.25% shareholding (on a fully diluted basis) in the Target from various selling shareholders by the Acquirer along with certain rights.

163. With reference to horizontal overlaps, the activities of the relevant portfolio companies of Blackstone Group and the Target (through ASK FH and ASK Wealth) overlapped in the financial services sector in India, particularly in (i) the market for the provision of loans and lending services in India and (ii) the market for the distribution of insurance products in India.

164. In the present case, the relevant portfolio companies of Blackstone Group are only present in the narrow segment for the provision of retail loans. The Target is present to a limited extent in the segment for the provision of retail loans and, that too, in connection of loans against securities. Therefore, the overlap is generally limited to the activity of provisions of loans and lending services and, at a narrower level, to the activity of provisions of retail loans.

165. It was observed that the combined market shares of the parties in the relevant markets are negligible. Further, the market for the provision of loans (including retail loans) and lending services is marked by the presence of competitors such as State Bank of India, Bank of India Ltd., IDBI Bank Ltd., Punjab National Bank Ltd., etc., as well as private sector players such as HDFC Bank Ltd., ICICI Bank Ltd., and Axis Bank Ltd. Further, the complementary relationship between the parties is insignificant.

166. The Commission decided to leave the delineation of the relevant market open as in the instant case.

167. The Commission opined that the proposed combination is not likely to have any appreciable adverse effect on competition in India. Therefore, the Commission approved the proposed combination under Section 31(1) of the Act.

***2.8.10. CCI approves proposed combination involving Clariant Pigments Business and Heubach Business with resulting combined business controlled by SK Capital and Heubach & Clariant***

*Combination Registration No. C-2021/07/856*

168. On 4 October 2021, the Commission approved a proposed combination involving Clariant Pigments Business and Heubach Business, with the resulting combined business controlled by SK Capital and Heubach & Clariant.

**169.** Clariant AG ('Clariant') is a corporation existing under the laws of Switzerland. Clariant globally operates in six main businesses: (i) additives, (ii) catalysts, (iii) functional minerals, (iv) industrial and consumer specialties, (v) oil and mining services, and (vi) pigments. The Clariant Pigments Business mainly supplies (i) organic pigments, (ii) pigment preparations, and (iii) dyes to provide colour in a variety of products.

170. Colorants International AG ('Colorants International') is a corporation existing under the laws of Switzerland. Colorants International is directly wholly owned by Clariant. Colorants Solutions USA LLC ('Colorants Solutions') is a limited liability company existing under the laws of USA. Colorants Solutions is wholly owned by Clariant Corporation, another USA entity which is, in turn, wholly owned by Clariant.

171. Heubach Holding GmbH ('Heubach') is a limited liability company under the laws of the Republic of Austria and is a manufacturer of corrosion protection pigments as well as organic and inorganic colour pigments and pigment preparations. SKCP is a private investment firm focused on the specialty materials, chemicals, and pharmaceuticals sectors [SKCP is SK Capital Partners, LP, while SKCI V is SK Capital Investment V, Limited, an affiliate of SKCP]. Luxembourg Investment Company 428 S.à.r.l ('Lux Bidco') is ultimately controlled by funds controlled by SKCI V.

172. The proposed combination related to the business of production and/or commercialisation of organic pigments, pigment preparations, and dyes conducted by Colorants International, Colorants Solutions, and their subsidiaries in various countries, including India ('Clariant Pigments Business') and the business of the production, manufacturing, and trading of corrosion protection pigments as well as organic and inorganic colour pigments, hybrid pigments, and pigment preparations as carried out by Heubach and its subsidiaries in various countries, including India ('Heubach Business').

173. It was noted by the Commission in the market of (i) organic and (ii) inorganic pigments, including narrower markets/segments, that either the combined market shares of the parties was not significant and/or the increment in market share as a result of the proposed combination was low. Further, in each of the relevant markets/segments, there was a presence of several other competitors who will continue to pose competitive constraints. Only in the case of the market for manufacture/sale of benzimidazolone pigments in India was the combined market share stated to be more than 25%, with the incremental market share between 5–10 %. However, in this market too, there were other significant players.

174. In the market for sale of pigment preparations in India, it was observed that the combined business will continue to compete in a fragmented market. Further, in the market for sale of dyes in India and the sub-segment of dyes, there were no significant competitive constraints post the proposed combination.

175. It was noted that there existed potential vertical relationships in India between Clariant Pigments Business, Heubach Business, and SKCP Portfolio Companies. However, the value of existing vertical relationships between the parties was not significant to raise any competition foreclosure concerns. With regard to potential vertical relationships, there was the presence of other players in the respective segments, and it was not likely to raise any concerns.

176. The Commission decided to leave the delineation of the relevant market open as it was observed that the proposed combination was not likely to cause an appreciable adverse effect on competition in any of the possible alternative relevant markets that could be delineated.

177. The Commission opined that the Proposed Combination is not likely to have any appreciable adverse effect on competition in India. Therefore, the Commission approved the proposed combination under Section 31(1) of the Act.

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

*Combination Registration No.C-2021/12/887*

178. On 20 January 2022, the Commission approved the acquisition of the entire outstanding equity share capital of the Target by the Acquirers from GlaxoSmithKline Pte and Smithkline Beecham.

179. The Acquirers are wholly owned subsidiaries of GlaxoSmithKline Consumer Healthcare Holdings (No.2) Limited (‘GSK CH HoldCo’). GSK CH HoldCo was established through the contribution by GlaxoSmithKline plc. (GSK) and Pfizer Inc. (‘Pfizer’) of their respective legacy consumer healthcare businesses and is owned 68% by GSK and 32% by Pfizer.

180. GSKAPL is involved in the marketing and distribution of over-the-counter (OTC) oral consumer healthcare products under various brand names, such as Parodontax, Sensodyne (foaming fluoridated toothpastes), and Polident (denture adhesive) as well as OTC medicine products such as Crocin (non-narcotic anti-pyretic product) and ENO brands (antacids and anti-flatulent products) (‘GSKAPL Products’).

181. The proposed combination consists of the following inter-connected steps: (i) GSKAPL’s acquisition of trademarks pertaining to Iodex (topical anti-rheumatic products) and Ostocalcium (calcium preparation products) brands (‘GSK Consumer Brands’) in India from GlaxoSmithKline Pharmaceuticals Limited (‘GSK Pharma’); and (ii) acquisition of 100% shares in GSKAPL by GSKCHOL and GSKCHUKTL. In terms of products/activities, the proposed combination involves transfer of GSKAPL Products and GSK Consumer Brands to GSK CH HoldCo.

182. The Commission considered the overlaps of each of the GSKAPL Products and GSK Consumer Brands with the retained business of Pfizer in India. There were horizontal overlaps in the areas/product segments of antacids and anti-flatulent products, topical anti-rheumatic products, and calcium preparation products, which were assessed further using the IQVIA-IMS India Database, which adopts the European Pharmaceutical Marketing Research Association’s (EphMRA) anatomical therapeutic chemical (ATC) classification of medicine, at the ATC3 level and/or ATC4 level.

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

184. Considering, *inter alia*, the presence of the parties, the nature of the products, and extent of competition in the relevant market segment, the Commission was of the opinion that the proposed combination was not likely to cause an appreciable adverse effect on competition in India.

### 3.8.12. CCI approves acquisition of stake in BusyBees Logistics by TPG Combination Registration No. C-2022/02/905

185. The Commission, *vide* order dated 23 March 2022, approved the acquisition of 6.92% shareholding of BusyBees Logistics Solutions Private Limited ('Xpressbees') by TPG Growth V SF Markets Pte. Ltd.(TPG SF). TPG SF would also have right to nominate a director on the board of directors of Xpressbees and the right to participate in matters requiring the consent of a certain threshold of the investors. TPG group is claimed to be a global, diversified investment firm. It also has a controlling stake in NewQuest Capital Partners ('NewQuest Capital'), a private equity investment firm. Xpressbees is engaged in the business of providing logistics and delivery solution services, including express parcel shipping services, B2B part truck load and full truck load freight services, cross-border logistics, and third-party (3P) logistics/contract logistics.

186. The notifying party claimed that the said Combination should have benefited from Item 1 of Schedule I of the Combination Regulations as TPG SF would have a minority shareholding in Xpressbees and TPG SF/TPG Group/New Quest Capital does not hold any investment in any entity that has horizontal overlaps with or is vertically related to the business activities of Xpressbees. In this regard, the Commission referred to the order issued under Section 43A of the Act in relation to Combination Registration No. C-2017/05/509, where it was noted that the term 'ordinary course of business' is also meant to refer to transactions done in the ordinary course of sale and purchase of securities done solely with the intent to benefit from short-term price movement of securities. However, the Commission noted that the purpose of the combination is not to benefit solely from short-term price movement. Further, acquisition in ordinary course of business of sale and purchase of securities neither entails the right or ability of any of the parties to the acquisition (including their affiliates) to participate in the decision-making processes of another party(ies) to the acquisition (including its affiliates), nor results in access to commercially sensitive information, nor envisages any other agreement or understanding having commercial significance. However, TPG SF would have the right to nominate a director on the board of directors of Xpressbees and participate in the matters requiring the consent of a certain threshold of investors. Therefore, the Combination could not claim exemption under Item 1 of Schedule I of the Combination Regulations.

187. The Commission observed that shopping is one of the important features of e-commerce. Sales of goods through e-commerce is not about just setting up an online portal/application but also warranting delivery of products at the address specified by the customer. Outbound logistics, i.e., end-customer facing logistics, bridges the distance between place of fulfilment centres of e-commerce operator and delivery, on an order-to-order basis. End-customer facing 3PL services for e-commerce ('3PL for E-Commerce') requires specialised features to suit the channel, such as robust last mile delivery network,

reverse pick-up, ability to handle returns, cash on delivery, timely and cost-efficient delivery, delivery during specified time slot, size of parcel being larger than ordinary courier parcel but smaller than B2B shipments, integration with the system of e-commerce players, etc.

188. Considering the significance and peculiar features of 3PL for e-commerce, the Commission noted that 3PL for E-Commerce and sales of goods through e-commerce exhibit vertical interface. Further, the overall logistics industry and overall 3PL service business are broad and encompass services that are not interchangeable or substitutable with 3PL for E-Commerce. Examination at narrower level, i.e., 3PL for E-Commerce, is warranted to assess the likely effect of the vertical interface. However, the Commission decided to leave the precise delineation of the relevant markets open as the combination is not likely to raise competition concerns, irrespective of the manner in which the relevant market is delineated.

189. 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.

190. The orders in relation to aforementioned combination matters can be accessed from the website of Commission at

191. <https://cci.gov.in/combination/orders-section31>

### 3. Human resources

192. At present, the Commission comprises a Chairperson and two Members. The administrative functions of CCI are coordinated by the Secretariat, headed by the Secretary. The office of 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, Research & Trend Analysis, 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, 170 staff members (53 lawyers, 24 economists, 35 other professionals, and 58 support staff) work at CCI. In addition, there are 174 outsource staff engaged by CCI.

193. CCI has a competition-related budget of INR 46.00 crores (6.06 million USD as on 31 March 2022) for the year 2021–22.

## 4. Summaries of or references to new reports and studies on competition policy issues

### 4.1. Workshop on Startup Ecosystem and Competition

194. CCI organised a virtual workshop on “Startup Ecosystem and Competition” on 4 February 2022, with IIT Bangalore as the knowledge partner. The workshop brought all stakeholders together on a platform to reflect on the evolving startup landscape in the country and deliberate on issues that are relevant for regulation and competition law enforcement. In addition to the inaugural session, the workshop consisted of two technical sessions on the following themes: (i) “Bigtech and Startups: Synergies and Challenges” and (ii) “Mergers and Acquisitions”. Mr Nandan M. Nilekani, Chairman and Co-Founder, Infosys, and Founding Chairman, UIDAI, delivered the keynote address in the workshop.

## 4.2. Market Study on the Pharmaceutical Sector in India

195. CCI conducted a market study on the pharmaceutical sector in India. With the overarching objective of understanding the factors that influence price competition in the pharmaceutical sector, the study focused on the specific realms of pharmaceutical distribution (including the emergence of e-pharmacies) and the role of trade associations therein, trade margins and drug pricing, and the prevalence of branded generic drugs in India and its implications for competition. Since the pharmaceutical sector is a regulated sector, the study also attempted to explore the areas of interface between regulation and competition with a view to ascertain the advocacy priorities of the CCI.

196. A virtual workshop on “Competition Issues in the Pharmaceutical Sector in India” was organised on 27 August 2021 as part of the market study. The workshop was an attempt to facilitate exchange of views across stakeholder groups, including doctors, representatives of pharma companies, representatives of various pharma associations, stockists, chemists, representatives of online pharmacies, sector experts, regulators, and policymakers. Dr. Vinod Paul, Member, NITI Aayog, delivered the keynote address at the workshop. The market study report, titled “Market Study on the Pharmaceutical Sector in India: Key Findings and Observations”, summarises the main findings and the Commission’s observations based on the study. It is expected that the insights gained from the market study will inform and contribute significantly to the design of the pharma market in India to help attain the objective of affordable medicines for all.

197. For more details, please

198. <https://www.cci.gov.in/economics-research/market-studies/details/19/1>

## 4.3. Market Study on Common Ownership in India

199. CCI initiated a market study on common ownership in India on 1 April 2021. The study is an attempt to understand a situation where large institutional shareholders hold minority stakes in a number of companies that are active in the same industry and compete with each other. It aims to gain visibility into markets with substantial institutional investor, gauge the trends and patterns in common ownership across various sectors in India, comprehend institutional investors’ underlying incentives and motivations behind such investments, and understand common shareholders’ rights on the decision-making process of a firm that may consequently impact competition. The study also intends to examine the safeguard mechanisms available in companies’ policies for mitigating competition concerns, if any, that may arise as a result of common ownership.

## 5. International cooperation

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

200. As mandated under Section 18 of the Act, until March 2022, CCI entered into Memorandum of Understanding (MOU), after obtaining approval from the Government of India, with the following competition authorities:

- Federal Trade Commission (FTC) and Department of Justice (DOJ), USA;
- Director General Competition, European Union (EU);
- Federal Antimonopoly Service (FAS), Russia;

- Australian Competition and Consumer Commission (ACCC);
- Competition Bureau (CB), Canada;
- 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);
- Administrative Council for Economic Defense (CADE), Brazil;
- Japan Fair Trade Commission (JFTC); and
- Competition Commission of Mauritius (CCM).

## 5.1. Overseas projects undertaken

201. CCI virtually hosted the 9<sup>th</sup> International Competition Network (ICN) Unilateral Conduct Working Group (UCWG) Workshop from 22–23 March 2022. The two-day workshop touched upon a wide array of issues concerning unilateral conduct in digital markets. The workshop was attended by over 200 officers from various competition agencies and non-governmental advisors (NGAs).

202. UCWG was established at the fifth annual ICN conference in May 2006. The objectives of UCWG are to examine the challenges involved in analysing the unilateral conduct of dominant firms and firms with substantial market power, facilitate greater understanding of the issues involved in analysing unilateral conduct, and promote greater convergence and sound enforcement of laws governing unilateral conduct.

## 5.2. Memberships of international organisations

### 5.2.1. *International Competition Network (ICN)*

203. ICN is a virtual international organisation comprising competition authorities across the globe as members. The work of ICN takes place in project-oriented Working Groups, where members work together, largely through teleconferences, teleseminars, webinars, workshops, etc. The ICN platform allows for a dynamic dialogue that serves to build consensus and convergence towards sound competition policy principles across the global antitrust community. ICN 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.

204. CCI and Competition Bureau, Canada, are the co-chairs of the ICN Operational Framework Working Group (OFWG). In this regard, OFWG held a conference call on 12 April 2021, aiming to revise the ICN Operational Framework Document. The next OFWG conference calls were held on 24 and 31 May 2021.

205. Four officers participated in the ICN Virtual Promotion & Implementation Workshop Skills Series on 2, 9, 16, 23, and 30 September 2021. The workshop provided practical training using ICN work product and ITOD video training modules and addressed investigative planning, developing reliable evidence, cooperation, and procedural fairness in merger review and conduct cases.

206. Two officers participated virtually in the ICN Cartel Workshop held from 17–19 November 2021.

207. Three officers participated virtually in the ICN Merger Working Group Workshop from 29 March–1 April 2022, organised by the Administrative Council for Economic Defense (CADE), Brazil.

### **5.2.2. BRICS competition authorities**

208. A Memorandum of Understanding between the competition authorities of BRICS (Brazil, Russia, India, China, and South Africa) was signed on 19 May 2016 during the International Legal Forum held in St. Petersburg, Russia. In 2020, the BRICS MOU on Cooperation in the field of Competition Law and Policy was extended for an open-ended period.

209. During the year 2021–22, a virtual meeting was held with the Competition Commission of South Africa (CCSA) on the BRICS Automotive Working Group, in which CCI is a project lead and CCSA is co-lead, to discuss the progress of the report on “Competition Issues in the Automotive Sector”.

210. CCI participated in the BRICS Ad-Hoc Working Group virtually to discuss the draft model recommendation on waivers in the process of considering global mergers and acquisitions by BRICS member states on 18 May 2021.

211. CCI hosted a virtual meeting of the heads of BRICS Competition Authorities on 27 May 2021 under India’s Chairship of BRICS. During the meeting, the participants discussed the progress made in BRICS Working Groups for research on competition issues of common interest such as pharmaceutical markets, food value chains, automotive markets, and digital markets.

212. CCI also participated in the VII BRICS International Competition Conference (ICC), hosted by the State Administration for Market Regulation (SAMR) China, on 16–17 November 2021, wherein a research report by the BRICS Competition Authorities Working Group on the automotive sector was released. Chairperson, CCI, signed the Chengdu Joint Statement along with the heads of the BRICS competition authorities. A video invitation was also showcased for hosting VIII BRICS ICC, 2023, in New Delhi, India.

### **5.2.3. Organisation for Economic Cooperation and Development (OECD)**

213. The Commission has an observer status with the OECD Competition Committee. The Commission and its officers regularly participate in the meetings of the OECD Competition Committee and the OECD Global Forum on Competition (GFC) to gain exposure to global best practices in the field of competition law and policy.

214. CCI has been making regular written contributions at various roundtables during the conferences/meetings of OECD. In the year 2021–22, CCI provided written contributions on “Regulation and Competition Enforcement”, “Competition Compliance Programmes”, “Data Portability, Interoperability and Competition”, and “The Promotion of Competitive Neutrality by Competition Authorities”.

215. CCI officers participated virtually in the OECD Competition Week meeting, held from 7–11 June 2021 and 29 November–3 December 2021. CCI also participated in OECD Global Forum on Competition from 6–8 December 2021 and the 6<sup>th</sup> Meeting of High-Level Representatives of Asia-Pacific Competition Authorities on 13 December 2021.

216. During the year, eleven officers participated in a three-day virtual workshop on competitive neutrality organised by OECD/Korea Policy Centre (KPC) from 4–7 October 2021.



217. One officer participated in the online OECD KPC workshop on “Legal Models for International Enforcement Co-operation” on 28 October 2021.

218. Six officers participated in the OECD KPC online workshop on “Regulatory Barriers to Competition in Professional Services” from 18–19 November 2021.

219. Two officers participated in the virtual OECD Competition Open Day, on 23 February 2022.

220. Five officers participated in the OECD KPC three-day virtual workshop on “Market Studies for Competition Advocacy and Enforcement” during 8, 10, and 11 March 2022.

#### **5.2.4. United Nations Conference on Trade and Development (UNCTAD)**

221. The Commission has been proactively engaging with UNCTAD, a UN body responsible for dealing with development issues, particularly international trade. CCI regularly participates in UNCTAD meetings.

222. CCI’s engagements with UNCTAD in 2021–22 are as follows:

223. Two officers participated in the meeting of the UNCTAD Working Group (WG) on Cross-Border Cartels (CBCs), held virtually on 1 June 2021, 31 January 2022, and 29 March 2022.

224. Chairperson, CCI, addressed the session on “Competition Advocacy during and in the aftermath of the COVID-19 Crisis”, which was held during 7–9 July 2021 at the 19<sup>th</sup> session of the UNCTAD Intergovernmental Group of Experts on Competition Law and Policy.

225. One officer participated virtually in the UNCTAD Ad-Hoc Expert Group Meeting on “Competition Law and Policy on Cross-Border Cartels” held on 23 November 2021.

### **5.3. International delegations received by the Commission from foreign governments and other/overseas delegations received at CCI**

226. 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. Due to the COVID-19 pandemic, there were no visits in 2021–22. However, the 4<sup>th</sup> EU–India Competition Week was organised virtually from 13–14 December 2021. Chairperson, CCI and Mr. Seppo Nurmi, Deputy Head of Delegation, Delegation of the EU to India and Bhutan, addressed the virtual meeting.

227. A virtual experience-sharing programme was also organised with United States Department of Justice (USDOJ) on 29 November 2021 to discuss its investigation on the Visa-Plaid Case and Amazon Art Poster Case.

### **5.4. Others**

228. One officer participated as a panel speaker in an online special policy session on “Competition Policy Developments in Digital Markets: the BRICS” on 5 September 2021, organised by the Competition and Regulation European Summer School and Conference (CRESSE) held under the 15<sup>th</sup> International Conference on Competition and Regulation from 3–5 September 2021 (‘CRESSE Conference 2021’).

229. One officer participated as a panel speaker in an online session on “Merger Control in Asia: Sharing Experience of New and Emerging Regimes and Trends” on 13 September

2021 organised under the 7<sup>th</sup> edition of the Antitrust in Asia conference by Concurrences Antitrust Publications and Events.

230. Chairperson, CCI, and an officer participated virtually in the G7 Enforcers Summit organised by the Competition and Market Authority (CMA) as part of the UK's G7 Presidency from 29–30 November 2021.

## 6. Advocacy Efforts

231. To create wider awareness by disseminating the various aspects of competition law, the Act, under Section 49, mandates CCI 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 endeavor of the Commission to prevent infringement of competition law rather than be a mere onlooker and penalize for infringement. In this pursuit, the Commission has undertaken a wide array of advocacy measures, as under.

232. 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 anticompetitive practices.
- Organizing advocacy programmes regularly with trade federations/associations to gain their feedback on various issues on 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, (ii) Compliance Manual For Enterprises, (iii) Diagnostic Toolkit Towards Competitive Tenders for Public Procurement Officers, (iv) Competition Assessment Toolkit,

and (v) Competition Law Module for Administrative and Judicial Training Academies.

- CCI has initiated case-based advocacy for sensitizing stakeholders and minimizing re-occurrence of violation of competition law in sectors, areas where CCI has already passed an enforcement order.

**6.1. New initiatives undertaken during the period (Financial Year 2021-22) are as under:**

- The Commission redesigned internship Programme to online mode for stakeholders due to the ongoing pandemic. From 1 April 2021 to 31 March 2022, 246 students from various universities in India underwent internship through the online mode.
- Advocacy with states has been a significant point in the overall outreach programmes of CCI and this has been augmented through the State Resource Person (SRP) scheme. As on date there are 12 States and 1 Union Territory of India have SRPs in place who carry out advocacy programmes. During the period, the Commission under SRP Scheme has conducted more than 170 programmes. 21 States and 5 Union Territories have nominated Nodal Officers for engagement on competition matters with CCI.
- Four editions of Commissions' quarterly newsletter '[Fair Play](#)' were published and distributed among various stakeholders and uploaded on website of the Commission. Hindi Edition of Quarterly Newsletter also commenced in this period.
- The Hon'ble Union Minister of Finance and Corporate Affairs, Smt. Nirmala Sitharaman, was the Chief Guest on 12<sup>th</sup> Annual Day of CCI which was celebrated on 20 May 2021 in virtual mode and also unveiled the inaugural published issue of 'CCI Journal on Competition Law and Policy' and Advocacy Booklets in Bengali, Marathi and Tamil languages.
- The Commission organised a workshop on Competition Issues in Pharmaceutical Sector in August 2021, stakeholder Consultation on Review of Confidentiality Regime in September 2021 and workshop on Startup Ecosystem and Competition in February 2022.
- CCI in association with trade associations have organised conferences. Conference was organised in association with ASSOCHAM in September 2021 and Confederation of Indian Industry (CII) in December 2021.
- The Commission organised Southern Regional Workshop in October 2021 and Western Regional Workshop in November 2021 under Azadi Ka Amrit Mahotsav.
- The Commission organised the National Webinar on Competition Law for students on under Azadi ka Amrit Mahotsav.
- The Commission organised a National Conference on Economics of Competition Law in virtual mode on 4 March 2022.
- The Commission organised Online Quiz and National Essay Competition under Azadi ka Amrit Mahotsav.