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COMPETITION COMMITTEE

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 thirteen years 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 producers and make markets work for the benefit of consumers.
2. This report focuses on the work carried out by CCI in 2022–23.

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

1.1. New legal provisions of competition law and related legislation

1.1.1. The Competition Commission of India (General) Amendment Regulations, 2022, dated 08.04.2022

3. The Commission, *vide* notification dated 08.04.2022, announced amendments to the regulations for the treatment of confidential information in its proceedings. The amendments were notified by substituting Regulation 35 of the Competition Commission of India (General) Regulations, 2009 (‘Amended Regulation’). The amendments allow parties access to confidential information/documents of other parties during an investigation and to defend themselves effectively, the Commission has introduced the concept of the ‘confidentiality ring’. The Commission may, at its discretion, set up a confidentiality ring comprising representatives of the parties, who will be given access to all confidential information (including the confidential version of the DG’s report, documents obtained during search and seizure, and complete version of CCI’s orders). The said regulation is amended with an objective to establish a robust information-sharing regime that allows parties to effectively present their cases without compromising the sanctity of commercially sensitive information.¹

1.2. Other relevant measures, including new guidelines

1.2.1. CCI (Procedure for Engagement of Experts and Professionals) Amendment Regulations, 2022, dated 12.04.2022

4. The Commission, *vide* notification dated 12.04.2022, amended the Competition Commission of India (Procedure for Engagement of Experts and Professionals) Regulations, 2009 (‘Principal Regulations’). In the amended regulations, the words “Experts or Professionals including Research Associates” were substituted with the words “Experts and Young Professionals”. In Schedule I of Regulation 5 of the Principal Regulations, the following amendments were made: -

¹ <https://www.cci.gov.in/legal-framework/regulations/12/0>

- a. The 'Qualification' and 'Experience' columns against the 'Economist' and 'Law' categories under the 'Class of Expert and Young Professional' entry were replaced with new entries.
 - b. 'Class of Expert and Young Professional' was added, along with their 'Qualifications' and 'Experience'.
 - c. In Regulation 5, for sub-regulation (2), the substitution was made that, depending upon the Schedule qualifications, specialisation, and experience in respective disciplines, the experts and young professionals will be categorised as per Schedule II, which indicates the preferred experience in years for the category of Experts and Young Professionals.
 - d. Schedule III of Regulation 6 was also substituted, wherein the lump-sum monthly remuneration and age limit was amended.
 - e. In Regulation 8, sub-regulation (1), a substitution was made that Experts and Young Professionals engaged by the Commission on a contractual basis will not be engaged for less than one year and will be engaged up to three years. Beyond the three-year term, the Commission, in special cases, may extend the term of engagement maximum up to two years.
 - f. In regulation 9, sub-regulation (4), provision of confidentiality and secrecy was added.²
5. Subsequently, *vide* notification dated 12.09.2022, Schedule III of the regulation was amended to bring about changes in the age limit criteria for Experts.³

1.3. Government proposals for a new legislation

6. The Competition (Amendment) Bill, 2022, was introduced in the Parliament in August, 2022, after reviewing the recommendations suggested by the Competition Law Review Committee. The Bill seeks to broaden the scope of anti-competitive agreements, provide for evaluation of combinations based on value of transactions, reduce the time limit for approval of combinations, and introduce settlement and commitment framework to reduce litigation.

2. Enforcement of competition laws and policies

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

7. 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

² <https://www.cci.gov.in/legal-framwork/regulations/11/0>

³ <https://www.cci.gov.in/legal-framwork/regulations/45/0>

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 (2022–23)

8. CCI received 41 cases alleging contravention of antitrust provisions in 2022–23. 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 (2022–23)

S.N.	Sector	2022-23
1	Real estate	2
2	Finance	4
3	I & B (Film/ Entertainment/ TV/ Print Media)	2
4	Health/Pharmaceuticals	8
5	Automobiles	1
6	Information Technology	8
8	Railways	2
9	Iron & steel	1
10	Miscellaneous	13
	Total	41

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

9. Nil

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

2.4.1. Case No.04/2018 (National Association of Container Freight Stations, Chennai Chapter vs. Trailer Owners Association & Ors.)

10. **Allegations:** The National Association of Container Freight Stations, Chennai Chapter (NACFS), an association of container freight stations (CFSs), filed an information against various trailer owners associations (TOAs) in Chennai region, alleging contravention of the provisions of Section 3 of the Competition Act, 2002 ('Act'). It was, *inter alia*, alleged by the Informant that the conduct of the Opposite Parties (OPs) in interfering with the fixation of tariffs of trailers by way of agreement between them instead of negotiation and restriction on the number of trailers that can be employed by the members of the Informant amounted to contravention of provisions of Section 3 of the Act.

11. The Commission, after hearing NACFS and the OPs in the preliminary conference, directed the Director General to cause an investigation into the matter, with respect to alleged contravention of the provisions of Section 3 of the Act.

12. **Findings of the DG Investigation:** CFSs are custom-bound in-transit facilities located near the port or in the hinterland, which help in the decongestion of ports by acting as hubs in the logistics chain, wherein the custom formalities for containerized cargo and less than container loads (LCL) are completed. The consignments are cleared for domestic consumption by the respective importers, upon compliance with requisite formalities at CFS. The movement of goods and containers from port to CFS during import and movement of goods and containers from CFS to port during export is done through trailers,

known as EXIM trailers, i.e., the members of the OP associations. The members of the Informant were dependent on the members of the OP for continuous movement of goods, especially considering that the CFSs generally have the space to accommodate at most three days of storage.

13. The DG found that members of TOAs held several meetings with members of the Chennai Trade Coordination Committee (CTCC) for the purpose of increasing freight traffic, which the CFSs were not only forced to comply with but also communicate to their members. With regard to the allegation of restricting the number of trailers that can be employed by the members of the Informant, the DG found that, at a meeting held at the Southern India Chamber of Commerce premises at Chennai, which was attended by members of the Informant and the OPs, it was categorically decided the CFS operators can ply a maximum of 20 vehicles and that any requirement over and above the 20 vehicles used by them should be given only to members of any of the six TOAs.

14. **Findings of the Commission:** The Commission, after considering the DG investigation report and submissions of the parties, observed that none of the TOAs denied having participated in the meetings where such decisions of anti-competitive nature took place, thus establishing the existence of agreement/understanding/arrangement amongst them under Section 3(3)(a) and (b) of the Act, which is presumed to have an appreciable adverse effect on competition (AAEC). The Commission examined the role of trade associations and the legitimacy of actions taken by them under the Act and found that, in the present matter, the TOAs have transgressed their legal contours and facilitated collusive decision making by allowing fixation of prices and restricting the provision of services under their aegis. The Commission noted that the TOAs were not able to rebut the said presumption. The TOAs were found to have manipulated the market forces and narrowed the scope of competition through the aforesaid collective collusive action. Based on the evidence on record, CCI found the ten TOAs to have contravened the provisions of Section 3(3)(a) and 3(3)(b) read with Section 3(1) of the Act.

15. **Direction:** The Commission directed the TOAs to cease and desist from indulging in practices that were found to be in contravention of the provisions of Section 3 of the Act.

2.4.2. Case No. 14/2019 (Federation of Hotel & Restaurant Associations of India, FabHotels vs. MakeMyTrip India Pvt. Ltd., Ibibo Group Private Limited, Oravel Stays Private Limited) and Case No. 01 of 2020 (Treebo vs. MakeMyTrip India Pvt. Ltd, Oravel Stays Private Limited)

16. **Allegations:** Two separate information's in Case Nos. 14/2019 and 01/2020 were filed by the Federation of Hotel & Restaurant Associations of India, FabHotels, and Treebo ('Informants') against MakeMyTrip-Ibibo ('MMT-Go') and Oravel Stays Private Limited ('OYO'), which were clubbed by the Commission based on substantial similarity of issues and allegations involved. It was, *inter alia*, alleged by the Informants that MMT-Go indulged in certain anti-competitive practices, *inter alia*, predatory pricing, charging of exorbitant commissions from hotels, misrepresentation, imposition of price parity and room parity obligations. Further, it was alleged that MMT-Go and OYO entered into confidential commercial agreements wherein MMT agreed to give preferential treatment to OYO on its platform, further leading to a denial of market access to Treebo and FabHotels, in contravention of Section 3 as well as Section 4 of the Act.

17. The Commission *prima facie* found MMT-Go to be dominant in 'the market for online intermediation services for booking of hotels in India', while OYO was found to be a significant player in the 'market for franchising services for budget hotels in India'. *Vide* order dated 28.10.2019, the Commission directed an investigation against MMT-Go for

alleged abuse of dominant position under Section 4 of the Competition Act, 2002 ('Act') by way of imposing parity obligations, predatory pricing, misrepresentation due to delayed delisting and manipulation of market dynamics, etc. Further, an investigation into the alleged anti-competitive arrangement between MMT-Go and OYO, whereby MMT-Go delisted the competitors of OYO (namely, FabHotels and Treebo) from its platform, was also directed to be investigated under Section 3(4) of the Act.

18. **Findings of the Commission:** The Commission undertook substitutability assessment from the perspective of both user groups. From the end-users' perspective, the Commission relied upon the Search, Compare and Booking (SCB) functionality test and observed that, owing to the distinct characteristic features of the OTAs, they may not be comparable with other online modes. As regards the substitutability from the perspective of the hotels (including the franchise hotel service providers), which the Commission found more appropriate for relevant market determination in view of the allegations under consideration, the Commission did not find the OTAs to be interchangeable with other modes of booking. The Commission opined that hotel partners want to list on OTAs primarily for visibility and discoverability.

19. *Inter-alia*, for these reasons, the Commission concluded that, first, online and offline are not part of the same market, and second, even within the online segment, OTAs constitute a separate relevant product market. Accordingly, the relevant market was defined as the 'market for online intermediation services for booking of hotels in India'. As regards dominance, the Commission considered various factors under Section 19(4), having due regard to the dynamic nature of the market under consideration, and found MMT-Go to be holding a dominant position in the market for online intermediation services for booking of hotels in India during the period of inquiry, i.e., 2017–20.

20. The Commission found that the parity conditions, exclusivity conditions, and deep discounts, in conjunction, create an ecosystem that reinforces MMT-Go's dominant position in the relevant market. First, it helps MMT-Go retain and further increase its network of users/travelers, who would increasingly use the platform for availing the best deals. Second, it impedes the competitive process between OTAs by limiting the competitive levers/instruments at the disposal of other portals that may not be able to get better prices from hotels by offering lower commission rates. Third, the consequent adverse effect on the sale of rooms through other platforms/channels and their user bases further accentuates the dependence of hotels on MMT-Go as well as the bargaining power imbalance that already exists between MMT-Go and its hotel partners. Fourth, the increased sales through MMT-Go may lead to unilaterally determined higher commissions charged by it, giving it the ability to also pass on discounts which are admittedly funded through these commissions, which may adversely impact the prices at which the hotels rooms are being offered to end-consumers. The conduct of MMT-Go was thus found to be in contravention of Section 4(2)(a)(i) read with Section 4(1) of the Act.

21. As regards the allegation pertaining to misrepresentation of information by MMT-Go, wherein MMT-Go was showing certain hotels/property to be sold out on its portals while the same were only delisted and may have had available rooms for booking, the Commission observed that MMT-Go is a dominant player in the relevant market and consumers rely heavily on results being shown on MMT-Go's website. Any such misrepresentation of information on MMT-Go's platform could affect the perspective of the consumer and may dissuade the consumer from searching on alternative channels for the same hotel, under the assumption that the hotel is sold out. This could result in a lower number of room bookings for the hotel partner and also reduce competition amongst the budget hotels registered on different OTAs, thereby leading to the exclusion of such hotels, besides this act of misrepresentation being exploitative in nature as regards such hotels.

22. Though the DG had also returned a finding of predation against MMT-Go, the Commission noted the submissions made by MMT-Go, in light of which the Commission found it difficult to determine the reliability and validity of assumptions on the basis of which the assessment was done by the DG. The Commission, thus, did not accept the said finding of the DG.

23. Besides abuse of dominant position by MMT-Go, the Commission examined the commercial arrangement between MMT-Go and OYO; *vide* which FabHotels and Treebo were delisted from the former's online portals in 2018. Based on the material available on record, the Commission found that there was an agreement/understanding between OYO and MMT-Go, which was in the nature of a vertical arrangement amenable to Section 3(4)(d) read with Section 3(1) of the Act, and the same had adversely affected competition in the market by denying access to an important channel of distribution through foreclosure. Further, the Commission also observed that, though FabHotels and Treebo were relisted by MMT-Go, pursuant to the intervention of the Commission in 2021, such relisting needs to be on equitable terms.

24. **Directions:** Observing that, besides imposing monetary penalty, it is imperative for the fair market regulator to ensure an environment that supports fair competition, the Commission prescribed certain broad behavioural remedies to MMT-Go. MMT-Go was, *interalia*, directed to modify its agreement with hotels/chain hotels to remove/abandon the price and room availability parity obligations with respect to other OTAs as well as the exclusivity conditions that exist, *interalia*, in the form of the D-minus clause. Further, MMT-Go was directed to provide access to its platform on a fair, transparent, and non-discriminatory basis to hotels/chain hotels by formulating the platforms' listing terms and conditions in an objective manner. MMT-Go was also directed to provide transparent disclosures on its platform as regards properties that are not available on its platform, either on account of termination of the contractual arrangement with any hotel/chain hotel or by virtue of exhaustion of quota allocated to MMT-Go by such hotel/chain hotel.

25. Besides, monetary penalties were imposed on MMT-Go and OYO at the rate of 5% of their relevant turnovers, amounting to INR 223.48crores [Rupees two hundred twenty-three crores and forty-eight lakhs only] and INR 168.88 crores [Rupees one Hundred sixty-eight crores and eighty-eight lakhs only], respectively.

2.4.3. Ref. Case No. 03 of 2018 (In Re: Chief Materials Manager, North Western Railway vs. Moulded Fibreglass Products and Others)

26. **Allegation:** CCI initiated this matter pursuant to a reference received from the Chief General Manager, North Western Railways, alleging cartelization by two entities in the bidding process for the procurement of high-performance polyamide (HPPA) bushes and self-lubricating polyester resin (SLPR) bushes (which are considered alternatives of each other) used in bogie mounted brake cylinder coaches, in contravention of the provisions of the Act.

27. **Finding:** During investigation by DG, it was found that, apart from the two entities, nine other entities were found to have indulged in cartelization in the supply of HPPA bushes/SLPR bushes to the Indian Railways by means of directly or indirectly determining prices, allocating tenders, controlling supply and market, coordinating bid prices, and manipulating the bidding process. Considering the evidence in the form of regular e-mail communications and WhatsApp exchanges between the parties, quoting of identical/similar prices by certain parties, filing of bids from same IP addresses by certain parties in close proximity, etc., CCI held 11 entities to have contravened the provisions of Sections 3(3)(a), 3(3)(b), 3(3)(c), and 3(3)(d), read with Section 3(1) of the Act. Besides, 14 individuals of

these 11 entities were held liable for the anti-competitive conduct of their respective companies/firms in terms of the provisions of Section 48 of the Act. During pendency of investigation before the DG, four entities had approached the CCI as Lesser Penalty applicants under Section 46 of the Competition Act, 2002 ('Act') read with Regulation 5 of the Competition Commission of India (Lesser Penalty) Regulations, 2009 ('LPR').

28. **Directions:** CCI imposed penalties @5% of the average turnover/income for the three preceding financial years upon the companies/firms and their respective individuals found guilty of violating the provisions of the Act. In terms of the LPR, CCI gave the benefit of reduction in penalty of 80%, 40%, 30%, and 20% to the first, second, third, and fourth applicants and their concerned individuals, respectively, considering their stage of approaching CCI, cooperation, etc.

29. For the detailed order, please visit <https://www.cci.gov.in/images/antitrustorder/en/0320181652428035.pdf>

2.4.4. *Suo Moto Case No. 06/2020 (Cartelization in the supply of protective tubes to the Indian Railways)*

30. **Allegation:** CCI initiated this case *suo moto*, pursuant to the receipt of an application under Section 46 of the Competition Act, 2002 ('Act') read with Regulation 5 of the Competition Commission of India (Lesser Penalty) Regulations, 2009 ('LPR'), disclosing cartel in the supply of protective tubes to the Indian Railways.

31. **Finding:** Based on the investigation by the DG and other material available on record, CCI observed seven companies/firms to have indulged in cartelization in the supply of protective tubes to the Indian Railways by means of directly or indirectly determining prices, allocating tenders, controlling supply and market, coordinating bid prices, and manipulating the bidding process. The evidence in the matter included regular email communications between the parties and the filing of bids from same IP addresses by certain parties. Further, ten individuals of these seven entities were also held by CCI to be liable for the anti-competitive conduct of their respective companies/firms in terms of the provisions of Section 48 of the Act.

32. **Directions:** Besides issuing a cease-and-desist order, CCI imposed penalties @5% of the average turnover/incomes for the three preceding financial years upon the companies/firms and their certain individuals found guilty of violating the provisions of the Act. The lesser penalty applicant was given 100% reduction in penalty in terms of the LPR.

33. For the detailed order, please visit <https://www.cci.gov.in/antitrust/orders/details/1036/0>

2.4.5. *Case No. 24 of 2017 (Federation of Corrugated Box Manufacturers of India vs. Gujarat Paper Mills Association and Others)*

34. **Allegation:** This case was filed by three federations/associations of corrugated box manufacturers alleging that the various regional associations of Kraft paper manufacturers, by way of periodic meetings and correspondences, directed their members (i.e., Kraft paper manufacturers) to: (i) increase the price of the paper to be sold to the buyers, i.e., corrugated box manufacturers; and (ii) create a condition of shortage to enforce the unjust price increase and shut the operation of the paper manufacturers in a region collectively.

35. **Finding:** The matter was referred to the DG for investigation, and based on the evidences found and other material available on record, such as minutes of meetings, e-mail communications, WhatsApp messages exchanged on groups, as well as oral

depositions of various representatives, CCI found 119 parties, including four regional associations of Kraft paper manufacturers, to be acting in contravention of provisions of Section 3(3) read with Section 3(1) of the Act. Of the 119 opposite parties, 31 Kraft paper manufacturers were lesser penalty applicants before the CCI under Section 46 of the Competition Act, 2002 ('Act'), read with Regulation 5 of the Competition Commission of India (Lesser Penalty) Regulations, 2009.

36. **Directions:** Keeping in mind the peculiar facts and circumstances of the case, including the fact that many of the Kraft paper manufacturers were micro, small & medium enterprises (MSMEs) and were going through economic and financial crisis as a fallout of the COVID-19 pandemic, CCI refrained from imposing any monetary penalty upon the infringing associations and Kraft paper manufacturers. Further, several Kraft paper manufacturers also admitted their wrongdoings and adopted a cooperative and non-adversarial approach. CCI also issued a cease-and-desist order against the contravening entities.

37. For the detailed order, please visit <https://www.cci.gov.in/antitrust/orders/details/1063/0>

2.4.6. Case No. 39 of 2018 (Mr. Umar Javeed and Others vs. Google LLC and Another)

38. **Allegation:** This case was filed by Mr. Umar Javeed, Ms. Sukarma Thapar, and Mr. Aaqib Javeed, alleging abuse of dominant position by Google in mobile operating system related markets.

39. **Finding:** The matter was referred to the DG for investigation. On the basis of investigation and material available on record, CCI found Google to be dominant in five different markets. Google operates/manages the Android OS as well as licenses its other proprietary applications. Original equipment manufacturers (OEMs) use this OS and Google's app in their smart mobile devices. Accordingly, they entered into multiple agreements to govern their rights and obligations, primarily the Mobile Application Distribution Agreement (MADA), Anti-Fragmentation Agreement (AFA), Android Compatibility Commitment Agreement (ACC), and Revenue Sharing Agreement (RSA). The combined results of these agreements allowed Google to access the search queries of mobile users, which not only helped protect advertisement revenue but also reap network effects through continuous improvement of services, to the exclusion of competitors. With these agreements in place, the competitors never stood a chance to compete effectively with Google, and ultimately, these agreements resulted in foreclosing the market for them as well as eliminating choice for users. CCI opined that the markets should be allowed to compete on merits and the onus is on the dominant players (in the present case, Google) that its conduct does not impinge this competition on merits. However, the underlying objective of Google in imposing various restrictions via MADA, AFA/ACC, and RSAs was to protect and strengthen its dominant position in general search services, and thus, its revenues, via search advertisements.

40. **Direction:** Google was found to be in violation of various provisions of Section 4 of the Act. CCI imposed a provisional penalty @10% of the average turnover for three preceding financial years of INR 1337.76 crore on Google for abusing its dominant position in multiple markets in the Android mobile device ecosystem, besides issuing a cease-and-desist order. Apart from the above, CCI also indicated certain measures to be complied by the Google.

41. For the detailed order, please visit <https://cci.gov.in/antitrust/orders/details/1070/0>

2.4.7. Case No. 07 of 2020 with Case No. 14 of 2021, Case No.35 of 2021 (XYZ (Confidential) vs. Alphabet Inc. and Others, Match Group, Inc. vs. Alphabet Inc. and Others, Alliance of Digital India Foundation vs. Alphabet Inc. and Others)

42. **Allegation:** This case was filed by XYZ alleging contravention of various provisions of Section 4 of the Act. It was alleged that Google, through its control over the Play Store and Android Operating System (OS), was favouring Google Pay over other competing apps, to the disadvantage of both apps facilitating payment through UPI as well as users.

43. **Finding:** The matter was referred to DG for investigation. On the basis of investigation by the DG and other material available on record, CCI found Google to be dominant in the markets for licensable OS for smart mobile devices and market for app stores for Android smart mobile OS in India. CCI noted that selling of in-app digital goods constitutes an important means for app developers to monetize their creations/innovations. However, Google's Play Store policies require app developers to exclusively and mandatorily use Google Play's Billing System (GPBS) to receive payments for paid apps as well as for in-app purchases, i.e., purchases made by users of apps after they have downloaded/purchased the app from the Play Store. If the app developers do not comply with Google's policy of using GPBS, they are not permitted to list their apps on the Play Store and thus, would lose out on the vast pool of potential customers in the form of Android users. Thus, app developers were left bereft of the inherent choice to use the payment processor of their liking from the open market. In addition, CCI examined the allegations of exclusion of rival UPI apps as effective payment options on the Play Store. It was found that Google Pay has been integrated with intent flow methodology, whereas other UPI apps can be used through collect flow methodology. It was noted that the intent flow technology is superior and more user-friendly compared to collect flow technology, with intent flow offering significant advantages to both customers and merchants and the success rate with the intent flow methodology being higher due to lower latency. Google informed CCI that it has recently changed its policy and allowed rival UPI apps to be integrated with intent flow.

44. **Direction:** CCI found Google to be in violation of various provisions of Section 4 of the Act. CCI imposed a provisional penalty @7% of the average turnover for three preceding financial years of INR 936.44 crore on Google for abusing its dominant position with respect to its Play Store policies, besides issuing a cease-and-desist order. Apart from the above, CCI also indicated certain measures to be complied by Google.

45. For the detailed order, please visit <https://www.cci.gov.in/antitrust/orders/details/1072/0>

2.5. Summary of activities of courts (Supreme Court and High Court) for the year 2022–23 (i.e., 01.04.2022–31.03.2023)

2.5.1. *Suo Moto Case No. 01/2021 (Meta Platforms Inc. vs. Competition Commission of India, Whatsapp LLC vs. Competition Commission of India; SLP (C) Nos. 17121/2022, 17332/ 2022 Decided on 04.10.2022 by Supreme Court)*

46. **Facts:** The Commission took *suo moto* cognizance of the privacy policy reported in various media reports that WhatsApp Inc. ('WhatsApp') updated its privacy policy and terms of service for WhatsApp users. The policy enabled WhatsApp to share user data with Facebook and its subsidiaries. The Commission 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 the imposition of unfair terms and conditions upon the users of the WhatsApp messaging app, in violation of the provisions of Section 4(2)(a)(i) of the Act. Accordingly, the Commission, *vide* order dated 24.03.2021, directed the DG to initiate an investigation under Section 26(1) of the Competition Act, 2002, against Facebook and WhatsApp LLC in connection with WhatsApp's 2021 update to its Terms and Privacy Policy ('2021 Update').

47. Writ petitions⁴ were filed before the Single Judge mainly to challenge the order dated 24.03.2021 passed by the Commission, wherein the Hon'ble Court dismissed the captioned petitions after finding no merits in the petition and refused to quash the 26(1) order of CCI. Aggrieved by the said order passed by the Ld. Single Judge, the LPA was preferred by Facebook and WhatsApp. The Hon'ble Court, *vide* judgement dated 25.08.2022, dismissed both the LPAs while observing that the judgement dated 22.04.2021, passed by the Ld. Single Judge, is well-reasoned and that the appeals filed by the appellants are devoid of merit and substance that would warrant the interference of the Court.

48. **Question adjudicated:** What is the nature and scope of the *prima facie* order passed by CCI u/s 26(1) of the Competition Act?

49. **Observations of the Court:** The Hon'ble Supreme Court dismissed the Special Leave Petitions filed against the judgment passed by the Delhi High Court. The Court held that the Commission is an independent authority to consider any violation of the provisions of the Competition Act, 2002, and when the Commission has *prima facie* opined that it is a case of violation of the provisions of the Act and thereafter, when proceedings are initiated by the Commission, it cannot be said that the same are wholly without jurisdiction. The court, in view of the above, stated that the Commission should not be restrained from proceeding further with the enquiry/investigation for the alleged violation of any of the provisions of the Act and dismissed the Special Leave Petitions.

50. **Decision of the Court:** The Division Bench order was upheld and the petitions were disposed of accordingly.

51. For the detailed judgement, please visit https://main.sci.gov.in/supremecourt/2022/29120/29120_2022_6_36_38956_Order_14-Oct-2022.pdf

2.5.2. Case No.41 of 2019 (Competition Commission of India vs. PMP Infratech Pvt. Ltd.; CA (C) No. 1851/2022 Decided on 23.11.2022 by Supreme Court)

52. **Facts:** GAIL filed an Information under Section 19(1)(a) of the Act before the Commission against PMP Infratech and Rati Engineering in Case No.41 of 2019, *inter alia*, alleging contravention of Section 3(3) read with Section 3(1) of the Act on account of bid rigging with respect to a tender floated by it. The Commission passed an order under Section 26(1) of the Act forming a *prima facie* view that a case of contravention of Section 3(1) read with Section 3(3) of the Act is made out and that a thorough and detailed investigation is required to ascertain the alleged bid rigging. The DG submitted its investigation report, *inter alia*, concluding that PMP Infratech and Rati Engineering "indulged in anti-competitive agreement/ conduct and concerted practices leading to collusive bid rigging" of tender and had thereby contravened the Section 3(3)(d) read with

⁴ W.P.(C) 4378/2021 & W.P.(C) 4407/2021

Section 3(1) of the Act. The Commission, *vide* order dated 11.10.2021, after considering the DG's investigation report in light of the objections raised by respondents, passed an order under Section 27 of the Act finding that PMP Infratech and Rati Engineering indulged in anti-competitive agreement/conduct and concerted practices leading to collusive bid rigging.

53. Aggrieved by the order of the Commission, PMP Infratech filed an appeal⁵ before the Hon'ble NCLAT, against the Commission's order under Section 27 of the Act dated 11.10.2021. PMP Infratech also filed an application seeking stay of the Commission's order before the Hon'ble NCLAT, *inter alia*, citing GAIL's emails asking PMP Infratech to stop its work. The Hon'ble NCLAT passed an order entirely staying order dated 11.10.2021 passed by the Commission subject to deposit of 10% of the penalty imposed. The interim order of the NCLAT was challenged by the Commission in a civil appeal before the Hon'ble Supreme Court.

54. **Question adjudicated:** Whether the blanket stay over the CCI final order in its entirety, i.e., not just on the penalty imposed but also on the cease-and-desist directions on the contravening parties by the NCLAT was correct.

55. **Observations of the Court:** The Hon'ble Supreme Court partly modified the impugned order of the Hon'ble NCLAT, clarifying that the cease-and-desist direction in the order dated 11.10.2021 passed by the CCI has not been stayed.

56. **Decision of the Court:** The appeal was disposed off in favour of the Commission.

57. For the detailed judgement, please visit

https://main.sci.gov.in/supremecourt/2022/4126/4126_2022_8_5_39937_Order_23-Nov-2022.pdf

2.5.3. Suo Moto Case No. 1/2021 (WhatsApp vs CCI &Anr. And Facebook Inc. vs. CCI &Anr. LPA 163/2021 and LPA 164/2021 - Decided on 25.07.2022 by High Court of Delhi)

58. **Facts:** 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 result 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. Accordingly, CCI, *vide* order dated 24.03.2021, directed the DG to initiate an investigation under Section 26(1) of the Competition Act, 2002 ('Act'), against Facebook and WhatsApp LLC in connection with WhatsApp's 2021 update to its Terms and Privacy Policy ('2021 Update'). The said order passed by CCI was challenged by way of writ petitions preferred by WhatsApp and Facebook. The Hon'ble Single Judge of the Delhi High Court disposed of the writ petition filed by way of order dated 22.04.2021.

59. Two LPAs were filed against the Delhi High Court order dated 22.04.2021 ('Impugned Order') passed by the Hon'ble Single Judge in WP (C) 4407 of 2021 ('Writ Petition').

60. **Question adjudicated:** Is the jurisdiction of CCI challenged on the grounds of the overlapping jurisdiction of CCI and other regulatory bodies?

⁵ Competition Appeal (AT) No.19 of 2021

61. **Observations of the Court:** The LPAs were argued extensively before the bench of the Hon'ble Chief Justice, Delhi High Court, and judgement was reserved in the matter on 25.07.2022. The Division Bench of the Delhi High Court dismissed the petitions of WhatsApp and Facebook. The bench said that the appeals were devoid of merits and also refused to further extend the stay granted on notices issued to WhatsApp and Facebook. The Hon'ble Court dismissed both the LPAs while observing that the LPAs are devoid of any merits. The Hon'ble Court, *inter alia*, observed:

62. The contention of the Appellants is that the CCI Order does not meet the jurisdictional threshold as no prima facie case has been established against the Appellants and the learned Single Judge has erred in upholding the Order dated 24.03.2021. However, a perusal of the CCI Order dated 24.03.2021 reveals that sufficient reasoning has been provided before the CCI arrived at the conclusion that a prima facie case of violation of Section 4 of the Act was made. The paragraphs of the said order indicating the same are as under:

63. It is not in dispute that WhatsApp occupies a dominant position in the relevant product market and that there exists a strong lock-in effect which renders its users incapable of shifting to another platform despite dissatisfaction with the product – as is exemplified by how, despite an increase in the downloads of Telegram and Signal when the 2021 Policy was announced, the number of users of WhatsApp have remained unchanged. By and large, to ensure retention of its user base and to prevent any other disruptive technology from entering the market, data is utilized by tech companies to customize and personalize their own platforms so that its user base remains hooked. When data concentration is seen through this prism, it does give meaning to the new adage that “data is the new oil”, and, as noted in the CCI Order dated 24.03.2021, it raises competition concerns because it prima facie amounts to imposition of unfair terms and conditions upon its users, thereby violating Section 4(2) (a) (i) of the Act.

64. Furthermore, as Paragraph 33 of the CCI Order dated 24.03.2021 (which has been reproduced hereinabove) states, accumulation and processing of personal data from WhatsApp, in addition to its own direct data collection, can be done by Facebook for the purposes of consumer profiling that allows for targeted ads, inter alia, which in turn has the potential to undermine competitive processes and create further barriers to market entry in stark violation of Section 4(2) (c) and (e) of the Act. In view of these observations, it is evident that CCI has, after due consideration, arrived at its decision that a prima facie case of violation of provisions of the Competition Act, 2002, has been made out against the Appellants herein that would require an investigation to be initiated by the DG. The learned Single Judge has taken into consideration all these factors before observing that concentration of data in the hands of WhatsApp may raise competition concerns, thereby resulting in the violation of Section 4 of the Act.

65. Additionally, the reliance of the Appellants on CCI's Order in Vinod Kumar Gupta (supra) is misplaced for the simple reason that 2016 Policy provided its users the option to “opt-out” of sharing user account information with Facebook within 30 days of agreeing to the updated Terms of Service and Privacy Policy. The 2021 Policy, however, places its users in a “take-it-or-leave-it” situation, virtually forcing its users into agreement by providing a mirage of choice, and then sharing their sensitive data with Facebook Companies envisaged in the policy. Therefore, it cannot be said that the CCI is bound by its own findings in Vinod Kumar Gupta (supra) when the issue at hand as well as the circumstances are different.

66. Apart from the aforesaid two issues, it is also the contention of the Appellant in LPA 164/2021 that it is a separate and distinct legal entity from WhatsApp, and therefore, it should not be subjected to an intensive and intrusive investigation by the DG in pursuance

of the findings of the CCI under Section 26(1) of the Act. In this regard, the Court finds merit in the submission of the learned ASGs that one of the key issues with the 2021 Policy is its propensity to share the data of its users with Facebook Inc., the parent company of WhatsApp. Solely for the reason that the policies itself do not emanate out of Facebook Inc., the Appellant cannot hide behind the fact that it is the direct and immediate beneficiary of the data sharing mechanism envisaged by the policies. These circumstances necessitate the presence of the Appellant in LPA 164/2021 as a proper party in the investigation pertaining to the 2021 Policy and the alleged anti-competitive practices they trigger.

67. In light of the aforesaid observations, this Court is of the opinion that the impugned Judgement dated 22.04.2021, passed by the learned Single Judge in W.P.(C) 4378/2021 & W.P.(C) 4407/2021, is well reasoned, and that the appeals filed by the Appellants are devoid of merit and substance that would warrant the interference of this Court.

68. Accordingly, the instant appeals are dismissed, along with pending application(s), if any.

69. **Decision of the Court:** The Hon'ble Court dismissed the LPAs' assailing CCI's 26(1) order.

70. For the detailed judgement, please visit

https://www.livelaw.in/pdf_upload/smp25082022lpa1632021092908-432257.pdf

2.5.4. CCI Case No. 05/2019 (Intel Technology India Pvt. Ltd. and Ors. vs. Competition Commission of India and Ors. WP No. 50727 of 2019 - Decided on 23.08.2022 by High Court of Karnataka).

71. **Facts:** CCI *prima facie* opined that the new differentiated India-specific warranty policy of Intel in regard to its boxed micro-processors was in contravention of Section 4(2)(a)(i) of the Act. The same also *prima facie* resulted in limiting or restricting the market for boxed micro-processors for desktop and laptop PCs in the territory of India in contravention of Section 4(2)(b)(i) of the Act, as well as resulted in denial of market access to parallel importers in contravention of Section 4(2)(c) of the Act. Accordingly, CCI directed the DG to cause an investigation into the matter under Section 26(1) of the Act *vide* order dated 09.08.2019.

72. Aggrieved by the order dated 09.08.2019, the petitioners filed the writ petition challenging the said 26(1) order passed by CCI and are before the Hon'ble High Court of Karnataka, Bangalore, seeking an order or direction by the Hon'ble Court to quash the impugned order dated 09.08.2019 passed by CCI under Section 26(1) of the Act and to close proceedings in Case No. 5/2019.

73. **Question adjudicated:** Can an inquiry of preliminary nature be interdicted?

74. **Observations of the Court:** The Karnataka High Court has now dismissed the petition filed by Intel Technology assailing CCI's 26(1) order directing a probe into its warranty policy with INR 10 lakh cost, setting a precedent so that the delaying tactics and attempts to scuttle the investigations could be stopped. The Hon'ble Court observed that:

75. The petitioners hastily rushed to the Court and unjustifiably secured an interim order that interdicted an inquiry of preliminary nature, for all these years, to the enormous prejudice of public interest. In the eyes of the Hon'ble Court this Writ Petition, is premature and absolutely devoid of merits, and is an abortive attempt by the petitioners to scuttle the innocuous statutory proceedings of the Commission. Therefore, it is a fit case for dismissal with exemplary costs. Accordingly, the Hon'ble Karnataka High Court dismissed the Writ

Petition with a cost of Rs. 10, 00,000/- (Rupees Ten Lakh) only, payable to the 1st respondent -Competition Commission of India within six weeks.

76. **Decision of the Court:** The Hon'ble Court dismissed the writ petition assailing CCI's 26(1) order.

77. For the detailed judgement, please visit https://www.livelaw.in/pdf_upload/intel-432157.pdf

2.5.5. CCI Case No. 24/2019 (MS. Shree Shivam Corporation VS Competition Commission of India, SCA 11152/2020 with 14 connected matters - Decided on 09.09.2022 by High Court of Gujarat)

78. **Facts:** An information was been filed by Mr. Virang Ashok Bhai Mehta, son of Ashok Bhai Mehta, Proprietor of M/S Gujrat Book Stores ('Informant') under Section 19(1)(a) of the Competition Act, 2002 ('Act'), alleging contravention of relevant provisions of Section 3 of the Act by the Gujarat Council Of Elementary Education, Gandhinagar (GCEE), and Ajay Offset & others. The Commission is of the opinion that there exists a *prima facie* case which requires an investigation by the DG. The Commission, *vide* order dated 13.01.2020, directs the DG to cause an investigation under Section 26(1) of the Act.

79. A group of petitions were filed against the order of the Commission passed in Case No. 24/2019 initiating the investigating proceedings and other notices issued thereof and involves the provisions of Competition Act, 2002. Accordingly, all these petitions were tagged together and heard together.

80. **Question adjudicated:** Can *prima facie* order u/s 26(1) affect the parties' rights?

81. **Observations of the Court:** The Hon'ble Gujarat High Court observed in its judgement dated 09.09.2022 that it is the prerogative of the Commission to invite any person or seek information from any person for forming *prima facie* opinion as to whether any inquiry contemplated under Section 26(1) of the Act is necessary or not. Such action of the Commission cannot be said to be biased or giving any right to other person against whom any order of inquiry is passed. The Hon'ble Court observed that:

82. Further, in the considered opinion of this Court, unless and until a detailed inquiry is conducted by the Director General, the question of dealing a finding in respect of violation of the statutory provision does not arise. Therefore, the petitioner should not have hesitated in participating in the inquiry which is yet to be commenced by the Director General and all the grounds raised by the Petitioners will be available before the Director General as well as before the Commission. The impugned order passed under Section 26(1) is only a starting point of the process and the petitioners want to stop process at the threshold and the Commission is not being permitted by the petitioner to proceed ahead in the matter.

83. Further, it is well settled that when questions of Fact are involved in any matter, the High Court may not exercise its constitutional power under Article 226 of the Constitution. Admittedly, in this case, as discussed hereinabove, the disputed question of facts relating to interpretation of information in the form of data is agitated. Therefore, on this ground also, this court deems it fit not to exercise its discretionary power under Article 226 of the Constitution of India, especially when the impugned order is administrative in nature.

84. In view of the aforesaid observations, this Court is of the considered opinion that the Writ-Petitions are devoid of merit and deserved to be dismissed.

85. **Decision of the Court:** The Hon'ble Court dismissed the writ petition assailing CCI's 26(1) order.

86. For the detailed judgement, please visit https://www.livelaw.in/pdf_upload/guj-hc-competition-434583.pdf

2.5.6. Case No.30/2019 (GMR Hyderabad International Airport Limited vs CCI &Ors., WP No. 22467/2019-Decided on 12.10.2022 by High Court of Telangana)

87. **Facts:** The CCI on 03.10.2019 passed an order under Section 26(1) of the Competition Act in Case No.30/2019, *prima facie* finding that the GMR Hyderabad International Airport Limited and GMR Aero Technic Limited were allegedly abusing market power and directed the DG to cause investigation into the matter and submit an investigation report.

88. Aggrieved by the order, GMR Hyderabad International Airport Limited and GMR Aero Technic Limited filed W.P. (C) No. 22467/2019 before the High Court of Telangana, seeking to set aside the *prima facie* order of CCI.

89. **Question adjudicated:** Whether the probe ordered *vide* 26(1) impugned order into abuse of dominant position was correct.

90. **Observations of the Court:** After a detailed round of arguments by the parties, the judgment was pronounced on 12.10.2022, whereby the Telangana High Court dismissed the writ petition and vacated the interim order dated 16.10.2019. The court noted that the order dated 03.10.2019 is well reasoned, given that only a *prima facie* opinion was formed.

91. **Decision of the Court:** The petition was disposed of in favour of the Commission.

92. For the detailed judgement, please visit <https://indiankanoon.org/doc/196673090/?type=print>

2.5.7. Case No.06/2012 (KCDA vs. CCI &Anr. WP No. 24297/2012-Decided on 10.11.2022 by Karnataka High Court)

93. **Facts:** An information was filed by Kailash Gupta, President, All India Chemist and Druggist and Distributors Federation (AICDF) in Case No.06/2012 against All India Organization of Chemists and Druggists (AIOCD) and 33 other parties, alleging that the parties were engaged in restricting the availability of medicine and they were abusing the dominant position by insisting upon PIS charges. The investigation was ordered by CCI under Section 26(1) of the Act. During investigation, the DG directed one of the OPs, Karnataka Chemist and Druggist Association (KCDA), to file certain information.

94. KCDA challenged the proceedings by way of W. P. No. 24297/2012 and obtained interim stay in the matter filed before the Karnataka High Court.

95. **Question adjudicated:** Whether the information sought by the DG was correct.

96. **Observations of the Court:** After a detailed round of arguments by the parties to the petition, the judgement was delivered on 12.10.2022, whereby the Karnataka High Court dismissed the writ petition, stating that the petition filed by the KCDA is premature.

97. **Decision of the Court:** The petition was disposed of in favour of the Commission.

98. For the detailed judgement, please visit https://drive.google.com/viewerng/viewer?url=https://www.livelaw.in/pdf_upload/karnataka-hc-cci-444984.pdf

2.6. Merger and acquisitions

99. The provisions of the Act for merger regulation (combinations) were brought into effect on 01.07.2011. 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. A combination must be notified to CCI within prescribed timelines⁶ 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.

100. The Green Channel scheme, introduced in August 2019, which provided for granting automatic approval to certain combinations, has seen an increase from ~19% in FY 2020–21 to ~27% in FY 2021–22 and ~25% in FY 2022–23. Since its introduction, 76 combination notices⁷ have been filed under the Green Channel, with 25 combination notices in FY 2022–23 under the Green Channel.

2.7. Statistics of merger filings to CCI

101. Till 31.03.2023, CCI had received 1,015 combination notices/cases, of which 1,007 cases have been disposed and eight are pending. Sector-wise distribution of combination notices received during the year is presented in Table 2.

Table 2.

S.No.	Sector	2022–23
1	Financial Markets	20
2	Power & Power Generation	10
3	Pharmaceuticals & Healthcare	9
4	Information Technology & Services	5
5	Food & Refined Oil	5
6	Mining & Metals	4
7	PVC & Chemicals	4
8	Media & Entertainment	4
9	Agriculture, Agriculture Inputs and Agrochemicals & Seeds	4
10	Airports/Airlines/Infrastructure	3
11	Cement	3
12	Glass & Glass Manufacture	3
13	Tiles and Sanitaryware	3
14	Textile	2
15	Auto & Auto-Components	2
16	Wholesale & Retail Trading	2
17	Electronic Manufacturing Services	2
18	Manufacturing of Plastic Products/Plastic Films	2
19	E-Commerce/Digital	1
20	Logistics	1
21	Ports	1

⁶ 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 16th March, 2022.

⁷ Till 31st March, 2023.

22	Shipping	1
23	Construction Equipment	1
24	Packaging	1
25	Personal Care & Food Beverages	1
26	Polyester	1
27	Apparel, Footwear & Accessories	1
28	Lubricant Oil	1
29	Paper Manufacture	1
30	Education	1
	Total	99

2.8. Important orders of CCI under Section 5 and 6 in 2022-23

2.8.1. CCI approved proposed combination involving Google International LLC and Bharti Airtel Limited (Combination Registration No.C-2022/03/913)

102. On 30.06.2022, the Commission approved the proposed investment of approximately 1.28% of the equity share capital of BhartiAirtel Limited (BAL/‘Target’) by Google International LLC (‘Acquirer’) (‘Proposed Investment’). Along with the Proposed Investment, the Parties also agreed to enter into certain collaborations, viz., (i) a Co-Marketing Agreement and the Cloud Agreement (together, ‘Commercial Deals’); and (ii) certain Future Commercial Arrangements.

103. The Acquirer is incorporated as a limited liability company under the laws of Delaware, USA. It is a wholly owned subsidiary of Google LLC (Google LLC, collectively with all its subsidiaries, is referred to as ‘Google’) and is ultimately owned by Alphabet Inc. The Acquirer is a holding company and does not own or operate any Google products or services. Google’s key products and services include Chrome, Gmail, Google Cloud Platform, Google Drive, Google Maps, Google Play, Android, Search, YouTube, and Google Ads. The Target is incorporated as a limited liability company under the laws of India. It is a global communications solutions provider. Its retail portfolio includes, amongst others, high-speed mobile broadband, AirtelXstreamFiber, streaming services (music and video), digital payments, and financial services. It is stated that, for enterprise customers, BAL offers solutions including secure connectivity, cloud and data centre services, cyber security, IoT, advertising, and cloud-based communication.

104. The activities of Google and BAL exhibited horizontal relationships with respect to (i) the supply of apps and mobile/web-services by type: (a) video streaming services, (b) communication services, (c) music streaming services, (d) UPI payment services; (ii) advertising services; (iii) internet of things (IoT) services for enterprises; (iv) cloud services; (v) connected devices; (vi) e-commerce marketplace; (vii) the segment for marketing of mobile phones in India; and (viii) the market for provision of cloud services/solutions in India. It was noted that the Acquirer and BAL are not vertically related or engaged in any complementary activities; however, certain affiliates of Acquirer and an affiliate of BAL have entered into commercial deals as part of the Proposed Transaction. The Commission then assessed the aforementioned commercial deals. Based on the submission provided by the parties, it was noted that the Cloud Agreement is not likely to raise any competition concerns. However, certain clauses in the Co-Marketing Agreement are likely to raise competition concerns.

105. In order to address the competition concerns arising as a result of the Proposed Transaction in relation to: (i) the possibility of flow of competitively sensitive information

between BAL and a competing firm; and (ii) certain clauses of the Co-Marketing Agreement, the Acquirer made a submission in terms of regulation 19(2) of the Combination Regulations, through which it offered certain modifications, including: (i) Google will maintain an appropriate firewall to prevent the flow of competitively sensitive information between BAL and a competing firm that Google may have access to on account of its investment; and (ii) undertaking to amend certain clause(s) of the Co-Marketing Agreement. Further, Google in its submission also confirmed that, under the Co-Marketing Agreement, Google and BAL will not share any customer or user-specific data.

106. Thus, the Commission noted the modification proposed by the Acquirer and approved the proposed combination under Section 31(1) of the Act, subject to carrying out of modifications under Regulation 19(2) of Combination Regulations.

2.8.2. CCI approved acquisition of entire shareholding in Air Asia India by Air India (Combination Registration No. C-2022/04/922)

107. The Commission, *vide* its order dated 13.06.2022, approved the acquisition of 16.33% shareholding in AirAsia (India) Limited ('AirAsia India') by Air India Limited ('Air India') from AirAsia Aviation Group Limited (AAGL), and transfer by Tata Sons Private Limited (TSPL) of its entire 83.67% shareholding in AirAsia India to Air India. AirAsia India is a joint venture (JV) between TSPL and AAGL. Presently, TSPL and AAGL hold 83.67% and 16.33% shareholding of AirAsia India, respectively.

108. Air India is an indirect wholly owned subsidiary of TSPL. TSPL is the ultimate holding company of the entities belonging to the Tata Sons group. Air India and Air Asia India belong to the same group, i.e., the Tata Sons group. TSPL is an investment holding company and is present in the passenger air transport sector through Air India, Air India Express Limited (AIXL), Air India SATS Airport Services Pvt. Ltd. (AISATS), Tata SIA Airlines Ltd. ('Vistara'), and AirAsia India. Vistara is a JV between TSPL and Singapore Airlines Limited (SIA), with TSPL and SIA holding 51% and 49% of the total equity shareholding, respectively.

109. Air India, AIXL, Vistara, and AirAsia India provide domestic scheduled air passenger transport service, air cargo transport services, and charter flight services in India. Air India, AIXL, and Vistara also provide international scheduled air passenger transport service. AISATS, a joint venture between Air India and SATS Limited, is engaged in the business of providing ground handling services at Delhi, Bengaluru, Hyderabad, Mangalore, and Thiruvananthapuram domestic airports, and cargo-handling services at Bengaluru airport. TSPL also has indirect shareholding and control over Taj SATS Air Catering Limited ('Taj SATS') and Taj Madras Flight Kitchen Private Limited ('Taj Madras'). Taj SATS and Taj Madras provide in-flight catering services in India. TSPL also holds majority shareholding in Taj Air Limited, which provides charter flight services in India.

110. The Commission observed that, in case of a combination, where from a target JV, one of the two JV partners exit and the continuing JV partner gains sole control over the target, it would be relevant to consider the scope and degree of control exerted by the exiting JV partner and continuing JV partner as well as the scope and degree of interest of the continuing JV partner in other enterprises that exhibit horizontal overlaps or vertical/complementary interface with the target.

111. Arrangement between the JV partners in relation to AirAsia India presently provides that, so long as TSPL holds a majority of the share capital of the Target, TSPL has the right to appoint a majority of the directors and AAGL has right to nominate only one director on the board of the Target. Each of TSPL and AAGL has the right to be

consulted by AirAsia India's board prior to making decisions in relation to the certain corporate actions.

112. The Tata Sons group is present in passenger air transport operations in India through two JVs, AirAsia India and Vistara, and through Air India including AIXL. In AirAsia India, the control exerted by Tata Sons group is significant, as it already has 83.67% shareholding along with certain contractual rights. The combination concerned the JV, i.e., Air Asia India, wherein the JV partner AAGL is exiting completely from the JV. As such, the influence exerted by AAGL over AirAsia India is not such that its removal is likely to affect the market behaviour of AirAsia India and overlapping entities of Tata Sons group so as to raise competition concerns.

113. The Commission approved the combination under sub-section (1) of Section 31 of the Competition Act, 2002, as it was not likely to have an appreciable adverse effect on competition in India.

2.8.3. CCI approved amalgamation of Zee Entertainment Enterprises Limited (ZEE) and Bangla Entertainment Private Limited (BEPL) with Culver Max Entertainment Private Limited (CME), with certain modifications (Combination Registration No. C-2022/04/923)

114. The Competition Commission of India on 04.10.2022 approved the amalgamation of Zee Entertainment Enterprises Limited ('ZEE') and Bangla Entertainment Private Limited (BEPL) with Culver Max Entertainment Private Limited (CME), with certain modifications.

115. CME is part of Sony Group Corporation (SGC), which has several general entertainment channels (GEC), film, sports, and kids' entertainment channels in India. BEPL is also part of SGC group. ZEE is also a media and entertainment company engaged in the business of, *inter alia*, TV content development, broadcasting of regional and international entertainment satellite television channels, movies, music, and digital content. Sony Group is an international business house, while Zee is an Indian group engaged in businesses across the TV and digital platforms value chain.

116. The activities of the parties largely overlap with respect to operation and wholesale supply of television channels and supply of advertising airtime on the respective TV channels in India. The other overlapping markets segments of the parties include retail supply of over-the-top audio-visual (AV) content in India, licensing of AV content in India, production and supply of films to third-party distributors and exhibitors for theatrical release in India, and licensing of music rights in India.

117. The preliminary assessment of the Commission suggested that the proposed combination *prima facie* is likely to result in appreciable adverse effect on competition as it is a horizontal combination between two competing broadcasting houses present across the TV and digital platforms value chain. The parties have a relatively higher market share in relation to Hindi language-based television channels. The Commission issued a show cause notice (SCN) to the parties as to why investigation in respect of the proposed combination should not be conducted. The parties submitted their response to the SCN and offered voluntary remedy proposal which initially was in the nature of behavioural commitments.

118. In order to alleviate the concerns of Commission, the parties offered revised remedy proposal which included structural modifications/divestment of TV channels and excluded the behavioural commitments offered earlier. Pursuant to the revised remedy proposal, the parties agreed to divest certain TV channels, namely, Big Magic, Zee Action, and Zee

Classic, as a going concern to an approved purchaser. The Commission observed that the divestment in Hindi language-based TV channels addresses the *prima facie* concerns of a likely appreciable adverse effect on competition as laid down in the SCN, and the Commission decided not to further proceed with investigation.

119. 88The Commission approved the proposed combination under sub-section (1) of Section 31 of the Act, subject to compliance of modifications.

2.8.4. CCI approved acquisition of Holderind Investments Limited, Ambuja Cements Limited and ACC Limited by Endeavour Trade and Investment Limited (Combination Registration No. C-2022/06/938)

120. The Commission, *vide* its order dated 12.08.2022, approved the acquisition of the entire share capital of Holderind Investments Limited ('Holderind') by Endeavour Trade and Investment Limited ('Endeavour'). Holderind held 63.11% of equity share capital of Ambuja Cements Limited ('Ambuja') and 4.48% of the equity share capital of ACC Limited (ACC). Further, Ambuja held 50.05% of the paid-up equity share capital of ACC. In terms of Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulations, 2011, Endeavour was required to launch an open offer for further acquisition of up to 26% of the expanded share capital of each of Ambuja and ACC.

121. Endeavour was a newly incorporated company belonging to the Adani group, which is an integrated infrastructure player with operation in resources, logistics, and energy verticals. Holderind is a holding company of Ambuja and ACC. Ambuja and ACC are engaged in the manufacture and sale of cement in India.

122. Adani Enterprises Limited (AEL), an entity of the Adani group through its subsidiaries, viz., Adani Cement Industries Limited (ACIL) and Adani Cementation Limited (ACL), proposed to engage in cement business through their projects at Lakhpat (Gujarat), Dahej (Gujarat), and Raigad (Maharashtra). These projects were expected to be operational in a phased manner.

123. The above projects of the Adani group would exhibit horizontal overlap with the business activities of ACC and Ambuja in the foreseeable future. Thus, the combination merited competition assessment, considering the proposed cement industry related operations of Adani group in the cement sector. It was submitted that the market for grey cement in the western region, comprising the states of Gujarat and Maharashtra, could be taken as the relevant market for assessment of the combination, given that the cement plants of ACIL and ACL are expected to be operational in a phased manner in Gujarat and Maharashtra. However, as Endeavour furnished an estimate of likely market shares in each of the states of Gujarat and Maharashtra, the Commission did not find it necessary to precisely delineate the relevant market, as the horizontal overlap between the activities of Acquirer group and Holderind was not likely to raise competition concerns in any of the plausible relevant markets.

124. Endeavour, an entrant in the cement industry, was acquiring one of the known cement brands in India. However, the market share estimates shown that the incremental capacities/market shares of the parties during CYs 2023–25 were not significant. It was also observed that other cement manufacturers had announced their plans to expand capacity in the Maharashtra and Gujarat regions.

125. The parties further exhibit the following vertical interfaces:

- i. Supply of limestone for cement manufacturing: Limestone, which is used as an input in the manufacturing of cement as a key raw material, is a low-value heavy material, transportation of which involves considerable cost. The cement plants

operated by Holderind (including its downstream affiliates) in Gujarat are located at distances more than 500 km from the limestone mine leased by ACL, making any potential procurement not financially viable, given the transportation costs involved.

- ii. Supply of fly ash for cement manufacturing: Of the total fly ash generated by thermal power stations in India during FY 2020–21, ~26% was utilized in the cement industry. In terms of volume, the aggregate of fly ash consumed by Ambuja and ACC was less than 15 MT during CY 2021, and supplies of fly ash by the Acquirer group during FY 2021–22 was less than 10 MT. It was observed that, apart from the Acquirer group, there are several other power plants located in nearby region from whom cement manufacturers could procure fly ash.
- iii. Supply of coal to cement manufacturer: During FY 2021–22, the aggregate coal dispatched and imported into India was 928.13 MT. Coal India Limited, a public sector undertaking, dispatched 661.89 MT during 2021–22, constituting around 70% market share. Private players cumulatively account for less than 25%. The thermal power sector remains the largest consumer of coal in India. The demand of coal from the cement industry is negligible. The coal that is traded by AEL is imported from third parties as it does not currently operate any coal mine in India. Out of the total coal sold by AEL during FY 2021–22, less than 10% was sold to cement manufacturers. During 2021, Ambuja and ACC had consumed less than 10 MT of coal.
- iv. Mine developer and operator (MDO) services to cement manufactures: MDO services relate to the evacuation and management of mineral extracted from the mines. AEL provides MDO services for coal and iron ore mines. Currently, no Adani group entity is engaged in the supply of MDO services to any cement manufacturer in India. The choice of the business model adopted would depend on the commodity proposed to be mined, the resources of the mine owner, the end use of such commodity, the transportation costs involved, the vertical integration of mine owners, etc. Limestone and coal are the two mined inputs used in cement manufacturing. It was claimed that outsourcing limestone mining is commercially not feasible. While lime is largely mined by the cement manufacturers themselves, the volume of coal consumed is relatively less and is generally procured from third parties. It was also claimed that the linkage between MDO services and cement manufacturing is notional.

126. Besides the above, cement manufacturers such as ACC and Ambuja could avail port services offered by the Acquirer group for transportation of raw materials and cement. Further, the Acquirer group appears to consume cement for its construction activities/projects in several locations. Given the extent of consumption and choices available, the said consumptions did not appear to raise any competition concerns.

127. The Commission approved the combination under sub-section (1) of Section 31 of the Competition Act, 2002, as it was not likely to have an appreciable adverse effect on competition in India.

2.8.5. CCI approved acquisition of Citibank's and Citicorp Finance's consumer banking business in India by Axis Bank (Combination Registration No. C-2022/06/941)

128. On 25.07.2022, the Commission approved the combination filed by Axis Bank Limited ('Acquirer') in relation to its acquisition of (i) consumer banking activities of Citibank N.A. ('Bank Consumer Business') and (ii) consumer banking activities of Citicorp

Finance (India) Limited ('NBFC Consumer Business') [Hereinafter, Bank Consumer Business and NBFC Consumer Business are collectively referred to as 'Target Businesses']. Pursuant to the proposed combination, the Acquirer will acquire complete and sole control over the Target Businesses, which will be subsumed with and into the Acquirer.

129. The Acquirer is engaged in the provision of retail banking services, commercial and wholesale banking services, and treasury services to various customer segments. Citibank is a national banking association organized in the USA whose business offerings are divided into two broad categories: (i) global consumer banking; and (ii) institutional clients' group. Through its global consumer banking division, Citi offers banking and wealth management services to retail customers. Citicorp Finance is a public company which offers NBFC business services in India, such as the provision of commercial vehicle and construction equipment loans, trade advances, etc. As part of its consumer business, Citicorp Finance provides personal loans and asset backed finance.

130. The Commission assessed the presence of the Acquirer and the Target Businesses in various business segments and sub-segments thereof in India. With respect to horizontal overlaps, the Commission noted that the activities of the Parties overlap in the following broader business segments, namely, a) provision of retail loans and lending services; b) provision of deposits and deposits-related services; c) provision of digital payment services; d) distribution of insurance services; e) distribution of mutual funds ('MFs'); f) referral of Portfolio Management Services ('PMS'); g) referral of Alternate Investment Funds ('AIF'); h) distribution of bonds; i) provision of foreign exchange services; and j) provision of depository participant services. Within the broad segment of provisions of retail loans and lending services, the parties exhibit overlaps in the narrower segments of provision of personal loans; credit (through credit cards); loan against deposits; home loans; loans against property; MSME loans; and loans for commercial vehicle and construction equipment. Within the broad segment of digital payment services, the parties exhibit overlaps in the provision of National Electronic Funds Transfer (NEFT), Real-Time Gross Settlement (RTGS), Immediate Payment Service (IMPS), Unified Payments Interface (UPI), credit cards, and debit cards. Within the broad segment of distribution of insurance products/services, distribution of non-life insurance and health insurance were considered at a narrower level. Lastly, within the broad segment of distribution of MFs, the Parties exhibit overlaps in distribution of equity-oriented MFs, debt-oriented MFs, and hybrid and other MFs.

131. With respect to vertical overlap between the parties, the Commission noted that their activities overlap in the following segments:

- a) Provision of life insurance services by the Acquirer (upstream) and distribution of insurance services by the Target Businesses (downstream);
- b) Provision of health insurance services by the Acquirer (upstream) and distribution of insurance services by the Target Businesses (downstream); Distribution of health insurance, at a narrower level, was taken into account;
- c) Provision of MFs by the Acquirer (upstream) and distribution of MFs by the Target Businesses (downstream); At a narrower level, equity-oriented, debt-oriented and hybrid and other MFs were taken into account;
- d) Provision of PMS by the Acquirer (upstream) and referral of PMS by the Target Businesses (downstream); At a narrower level, provision of discretionary and non-discretionary PMS were taken into account;

- e) Provision of AIF by the Acquirer (upstream) and referral of AIF by the Target Businesses (downstream); At a narrower level, provision of category II and category III AIFs were taken into account;
- f) Provision of Bonds by the Acquirer (upstream) and distribution of Bonds by the Target Businesses (downstream).

132. 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, the Commission also noted that, in the business sub-segments of provision of credit cards and provision of credit through credit cards, the combined market share of the parties was in the range of [10-15]% (in terms of value) and the incremental market share was in the range of [0-5]% and [5-10]%, respectively. It was further noted, based on the submission of the parties, that the combined market shares of the parties in these sub-segments has declined in the last three years despite increase in market size, indicating significant competitive constraints from other large players such as HDFC, SBI, and ICICI. 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.

133. The Commission approved the combination under sub-section (1) of Section 31 of the Competition Act, 2002, as it was not likely to have an appreciable adverse effect on competition in India.

2.8.6. CCI approved proposed combination involving amalgamation of HDFC Limited, HDFC Bank, HDFC Investments, and HDFC Holdings (Combination Registration No. C-2022/06/942)

134. On 12.08.2022, the Commission approved the proposed combination involving amalgamation of HDFC Limited, HDFC Bank, HDFC Investments, and HDFC Holdings *vide* two-step amalgamation process: (i) Step 1: Amalgamation of HDFC Investments Limited ('HDFC Investments') and HDFC Holdings Limited ('HDFC Holdings') into and with Housing Development Finance Corporation Limited ('HDFC Limited'), such that HDFC Limited will be the surviving entity post this step; and (ii) Step 2: Amalgamation of the amalgamated HDFC Limited into HDFC Bank, such that HDFC Bank will be the surviving entity post this step. Steps 1 and 2 together constituted the Proposed Combination.

135. HDFC group collectively refers to HDFC Limited (as the ultimate holding company and the single largest shareholder of HDFC Bank) and its subsidiaries, associate entities, and joint venture entities which, together, are a group of entities primarily active in the provision of financial services in India. HDFC Limited is a public limited company incorporated under the Companies Act, 1956, and also a housing finance company registered with the National Housing Bank (NHB). It is primarily engaged in the business of providing finance to individuals, corporates, and developers for the purchase, construction, development, and repair of houses, apartments, and commercial properties in India. HDFC Bank is a public limited company incorporated under the Companies Act, 1956, and also registered with the Reserve Bank of India (RBI) as a banking company. It is engaged in the business of providing a range of banking and financial services, including retail banking, wholesale banking, and treasury operations through various branches in India.

136. The activities of HDFC Bank and HDFC Limited exhibited horizontal overlaps with respect to: (i) provision of deposit-taking services in India, (ii) provision of loans and

lending services in India segmented into provision of retail loans in India and provision of non-retail loans in India, (iii) market for enrollment/distribution of NPS in India, and (iv) provision of IT services in India. Further, the market for provision of retail loans in India can be further segmented into (a) narrower market for provision of loans against property, (b) narrower market for provision of auto loans, (c) narrower market for provision of education loans, and (d) narrower market for provision of consumer durables. The market for provision of non-retail loans in India can be further segmented into (a) narrower market for provision of infrastructure loans/project finance and (b) narrower market for provision of loans against rental receivables, provision of infrastructure loans/project finance in India, and provision of loans against rental receivables in India. Furthermore, the activities of the parties also exhibited vertical overlap with respect to (i) loans and lending services, which can be further segmented into (a) provision of housing finance/home loans in India vertically linked with the distribution of housing finance/home loans in India and (b) provision of education loans in India vertically linked with the referral of education loans in India; (ii) insurance-related services, which can be further segmented into (a) provision of life insurance products and services in India vertically linked with distribution of life insurance products and services in India and (b) provision of general insurance products and services in India vertically linked with distribution of general insurance products and services in India; (iii) mutual funds; (iv) portfolio management services; and (v) pension fund-related activities. Based on the submissions of the parties, the Commission noted that, in respect of horizontal overlaps, the parties/their group entities/their affiliates had negligible combined and incremental market shares and there were several other players active in all of the markets. Further, with respect to vertical relationship, it was noted that the Proposed Combination is not likely to change the competition dynamics or raise any foreclosure concerns in the upstream or the downstream market.

137. Thus, the Commission was of the opinion that the Proposed Combination is not likely to have any appreciable adverse effect in India and hence, approved the Proposed Combination under Section 31(1) of the Act.

2.8.7. CCI approved the merger of Aditya Marketing and Manufacturing Private Limited into Umang Commercial Company Private Limited (Combination Registration No. C-2022/07/952)

138. On 30.08.2022, the Commission approved the merger of Aditya Marketing & Manufacturing Private Limited (AM/‘Target’) into Umang Commercial Company Private Limited (‘Umang’/‘Acquirer’). As a result of the merger and in terms of the scheme, the shares held by the Target in 15 entities would get vested in the Acquirer. Further, on account of the aforesaid vesting of shares, the Acquirer group would acquire control over a total of five entities which, as on date, are under the control of BKB Family (defined below), namely, Padmavati Investment Private Limited (‘Padmavati’), Pilani Investment and Industries Corporation Limited (‘Pilani’), Century Textile and Industries Limited (‘Century Textile’), Ganesh Tubes and Services Private Limited (‘Ganesh Tubes’), and Century Enka Limited (‘Century Enka’).

139. The Acquirer is registered as a Non-banking Financial Company (NBFC) and belongs to the Aditya Birla Group of companies. It is an investment company which holds shareholding in various entities on behalf of the Kumar Mangalam Birla and/or his family (‘KMB Family’). Aditya Birla Group is an Indian multinational conglomerate having businesses in various industry sectors, including textiles, garments, chemicals, cement, metals and mining, apparels, life insurance, and financial services. The Target is an investment company and belongs to the B.K. Birla Group of companies. It is registered as an NBFC which holds shareholding in various entities on behalf of late Mr. Basant Kumar

Birla and his family ('BKB Family'). The B.K. Birla Group is a diversified group with presence in various industry sectors, including textiles, cement, nylon tyre cord fabric, tea, and tyres.

140. The activities of the Acquirer Group and its affiliates vis-à-vis the Target, Padmavati, Pilani, Century Textile, Century Enka and Ganesh Tubes exhibited horizontal overlap with respect to (i) viscose filament yarn (VFY), (ii) sodium sulphate, (iii) sulphuric acid, (iv) carbon disulphide, (v) grey cement, and (vi) cotton textile. Further, the parties also exhibited existing and potential vertical relationships with respect to VFY; viscose staple fibre (VSF); rayon grade pulp; chemicals further segmented into caustic soda, sodium sulphate, phosphoric acid, and chlorine; cotton yarn; cotton blended yarn; pulp; transparent paper; nylon tyre cord fabric; nylon filament yarn; textile; apparels; carbon black additives; tyres; red mud; and phospho-gypsum and grey cement.

141. In relation to horizontal overlaps, the Commission observed that the presence of the parties is not likely to cause any competition concerns in India in any relevant market except (1) market for manufacture and sale of VFY in India and (2) market for manufacture and sale of grey cement in Rajasthan relevant market, Western Uttar Pradesh relevant market, and Karnataka relevant market. Further, in relation to vertical relationships, the Commission observed that the presence of the parties is not likely to cause any competitive foreclosure concerns in India.

142. In order to address the competition concerns arising as a result of the proposed combination in (1) market for manufacture and sale of VFY in India and (2) market for manufacture and sale of grey cement, the Acquirer made a submission in terms of Regulation 19(2) of the Combination Regulations through which it offered that, post the Proposed Combination, GIL, UltraTech, KIL, and MCL will continue to function as independent entities, as the control of the respective companies will remain vested with distinct groups. Further, the Acquirer group will *de facto* not acquire any special rights or material influence over KIL or MCL and both the entities will remain under the control of the BKB Family only (despite the shareholding of the Acquirer group being higher than the BKB Family in these entities, post the Proposed Combination).

143. Thus, the Commission noted the modification proposed by the Acquirer and approved the proposed combination under Section 31(1) of the Act subject to carrying out of modifications under Regulation 19(2) of Combination Regulations.

2.8.8. CCI approved a proposed combination involving AGI Greenpac Limited and Hindusthan National Glass & Industries Limited (Combination Registration No. C-2022/11/983)

144. On 15.04.2023, the Commission approved a notice filed by AGI Greenpac Limited ('AGI'). The proposed transaction involves acquisition of up to 100% of the equity share capital of Hindustan National Glass & Industries Limited ('HNG') by AGI.

145. AGI and HNG are engaged in the manufacture of glass containers in India, catering to the packaging needs of a broad range of industries such as alco-beverage, cosmetics and perfumery, pharmaceutical, and food and beverages (F&B). Apart from glass containers, AGI manufactures PET bottles and caps and closures.

146. The activities of AGI and HNG relate to the manufacture and sale/supply of packaging materials at the broader level. Packaging materials can be classified on the basis of varying criteria: (i) forms/types/designs of packaging; (ii) types of packaging materials; and (iii) classification/types of industrial users. The Commission observed that substrates made of different packaging materials, viz., glass, tetra packs, PET, metal cans, etc., are

very different from each other in terms of characteristics and cannot be considered substitutable. The Commission observed that glass is somewhat unique as a packaging material given, on the one hand, its suitability for certain product segments, viz., alcohobeverages given its characteristics, and on the other hand, given its look and aesthetics, it appears to be a packaging material of choice for users across product segments who are eyeing premium positioning of their products. AGI on its part emphasized functional substitutability to imply that all packaging materials are the same. However, the Commission was of the view that functional substitutability completely ignores that the demand for packaging materials is primarily a derived demand, wherein the choices of industrial users are expected to be guided by multiple parameters and not simply based on functional substitutability. Accordingly, the Commission assessed the transaction in the market for container glass. Further, the Commission also observed that there is no demand-side substitutability for container glass for various industrial user segments and supply-side substitution is at best limited and also not relevant. Accordingly, the Commission considered it appropriate to further segment the market by industrial user segments of alcoholbeverage, cosmetics and perfumery, pharmaceuticals, and F&B sub-segments, respectively.

147. As a part of its assessment, the Commission noted that the market share estimates reveal that the market for container glass in India is concentrated and the transaction is likely to significantly increase the level of concentration, with the combined entity emerging as the largest player, further consolidating on the existing position of HNG in the overall glass container market and the segments of containers glass for alcoholbeverage and F&B. The Commission observed that PGP and Schott, who are other leading players in container glass, have significant presence in the household and pharmaceuticals segments, and these competitors are not expected to impose sufficient competitive constraints on the combined entity. The Commission also made observations on the lack of competitive constraints from the unorganized segment of container glass. Apart from significant presence and lack of effective constraints, the Commission observed that countervailing buyer power and threat of imports at best appears to be limited. Accordingly, the Commission issued a show cause notice in terms of Section 29(1) of the Competition Act, 2002 ('SCN').

148. AGI, along with the response to SCN, offered the divestiture of the Rishikesh plant of HNG ('Divestiture') to alleviate the *prima facie* concerns identified by the Commission in the SCN. The Rishikesh plant has a production capacity of 400 TPD (1, 46,000 MTPA) and two glass-melting furnaces. The Rishikesh plant is the least loss-making amongst the plants of HNG. It has substantial and sizeable operations and has witnessed growth in revenue over the years. As per the information submitted, the revenue from the Rishikesh plant increased from INR 233.1 crore in FY 2021 to INR 290 crore in FY 2022.

149. The Commission observed that the production capacity of the Rishikesh plant constitutes approximately 17% of HNG's total utilized capacity and accounts for 25% of incremental capacity. In terms of the impact of the container glass segments, the divestiture would lead to the elimination of around 28% and 15% of the increment in the alcoholbeverage and F&B segments, respectively. The Commission was of the opinion that that the assets proposed to be divested appear to be self-contained and the Divestiture appears to incentivise a new entry or augmenting of capacity by an existing competitor, with a share of around 5% market in container glass.

150. The Commission considered the above against the backdrop of HNG facing significant operative and financial issues, reflected in the reduction of its operational capacity to 2325 TPD from 4300 TPD on account of non-operating furnaces. In terms of financials, it was noted that HNG has been incurring losses since FY2013, which has

completely eroded its net worth, and there have been concerns regarding HNG even being a going concern. The same is also reflected in the fact that HNG is currently undergoing corporate insolvency resolution process under the Insolvency and Bankruptcy Code, 2016 (IBC).

151. Considering the above, the Commission undertook a holistic approach balancing the structural changes in concentration, etc., resulting from the transaction and the ground position of operational affairs of HNG plants and concluded that the transaction is not likely to have an AAEC subject to compliance of Divestiture and accordingly approved the transaction.

152. The orders in relation to the aforementioned combination matters can be accessed from the Commission's website at <https://cci.gov.in/combination/orders-section31>

3. Human resources

153. 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 the DG investigates contraventions of the provisions of the Act and is headed by the DG. In addition, there are 14 main divisions of CCI, namely, Advocacy, Antitrust-I, Antitrust-II, Capacity Building, Combination, Economics, International Cooperation, Research & Trend Analysis, Legal, Corporate Service, Finance & Accounts, HR, and IT. Each division is steered by a senior officer at the level of Adviser. The divisions assist the Commission in the fulfillment of its legal mandate. At present, 365 staff members (58 lawyers, 34 economists, 38 other professionals, and 59 administrative officers) work at CCI. In addition, there are 176 outsource staff engaged by CCI.

154. CCI has a competition-related budget of INR Rs. 47.02 crore (USD 5.57 million as on 31 March 2022) for the year 2022–23.

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

4.1. Market Study on the diagnostic medical imaging equipment industry in India (focused on MRI and CT scan)

155. CCI initiated a market study on the diagnostic medical imaging equipment industry in India (focused on MRI and CT scan) in 2022–23. It is an attempt to understand the trends in the said sector, analysing and highlighting the existing and emerging competition dynamics, industry structure, vertical and/or horizontal integration of the market participants, entry/trade barriers, skill set for operating different diagnostic equipment, and anti-competitive market conditions, if any. The outcome of the study may provide appropriate policy prescriptions to promote a level playing field and to ensure sustainable and long-term competitive growth of the diagnostic medical imaging equipment market/industry in India.

4.2. Market study on the film distribution chain in India

156. The Commission conducted a market study on the film distribution chain in India. The market study has identified some key competition issues emanating from the role of various film industry associations and imbalances due to the superior bargaining power of some entities. Industry stakeholders have voiced concerns about unequal revenue sharing

arrangements, challenges posed by newer technologies in cinema, virtual print fees, and tying and bundling arrangements at the exhibition level. The Commission has advocated certain recommendations for self-regulation by the stakeholders which can allay competition concerns and limit regulatory interference. For further details, please visit <https://www.cci.gov.in/economics-research/market-studies/details/41/0>.

4.3. Market Study on mining sector in India (with focus on iron ore)

157. The Commission has initiated a Market Study on mining sector in India (with focus on iron ore) in December, 2022. The scope of the Study is mining sector in India, specifically iron ore sector. The main objectives of the Study are: (i) to get an analytical overview of trends of development in mining sector in India (ii) to understand the legal and policy framework governing mining industry and to assess whether it contains anti-competitive/market distorting potential (iii) to gauge the competition concerns, if any, due to the vertical integration in the mining sector and (iv) to understand the ownership concentration in iron-ore industry in India and comparing it with market concentration globally.

5. International cooperation

5.1. Memorandums or arrangements signed with agencies of foreign countries

158. As mandated under Section 18 of the Act, until March 2022, CCI entered into a 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), Australia;
- 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), Japan; and
- Competition Commission of Mauritius (CCM), Mauritius

5.2. Overseas projects undertaken

159. Nil.

5.3. Memberships of international organizations

5.3.1. *International Competition Network (ICN)*

160. 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.

161. The ICN's 21st Annual Conference was hosted by the Bundeskartellamt, the conference took place in Berlin on 04–06.05.2022 at the Steigenberger. During the conference Competition policy and enforcement issues were discussed.

162. Two officers participated in the 10th ICN Unilateral Conduct Working Group (UCWG) Workshop, held on 07-08.03.2023 in Tokyo, Japan.

5.3.2. BRICS competition authorities

163. An MoU between the competition authorities of BRICS (Brazil, Russia, India, China, and South Africa) was signed on 19.05.2016 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.

164. Two officers attended the call on the review of leniency programmes in BRICS countries held on 31.05.2022.

165. One officer participated in the meeting of the BRICS Working Group on Digital Economy, held on 24– 25.11.2022 in Rio de Janeiro, Brazil.

166. Dr.Sangeeta Verma, Acting Chairperson, CCI, attended the meeting of the Heads of the BRICS Competition Authorities, held virtually on 15.11.2022. She also apprised them that India will be hosting the VIII BRICS ICC 2023 on 11–13.10.2023 in New Delhi.

5.3.3. Organisation for Economic Cooperation and Development (OECD)

167. CCI has been regularly submitting written contributions to various roundtables during the conferences/meetings of OECD. In 2022–23, CCI provided three written contributions: “Interactions between Competition Authorities and Sector Regulators”, “Purchasing Power & Buyer’s Cartels”, and “The Evolving Concept of Market Power in the Digital Economy”.

168. Seven officers participated in the OECD Korea Policy Centre’s three-day online webinar on competition and digital markets, held on 19, 20, and 21.04.2022.

169. One officer participated in the OECD workshop on hub-and-spoke cartels, held on 11–12.05.2022, at Riga, Latvia.

170. Two officers attended the OECD Competition Week, held on 20–24.06.2022 in Paris, France.

171. During the year, two officers participated in OECD/KPC, a three-day competition law workshop on advocacy strategies in the Asia Pacific, held on 25–27.10.2022 in Bangkok, Thailand.

172. Seven officers participated in the OECD/KPC workshop on “Merger Control-Theories of Harm”, held virtually on 22–24.11.2022.

173. Shri Bhagwant Singh Bishnoi, Member, CCI, attended the meeting of high-level representatives of Asia-Pacific Competition Authorities during the OECD week in Paris, France, held on 30.11.2022.

174. One officer attended the OECD meetings (Competition Committee and Global Forum) held on 30.11–02.12.2022 in Paris, France.

175. One officer participated in the OECD workshops on “Procedural Safeguards in Competition Enforcement” and “Competition in Digital Markets: Recent Enforcement”, held on 22 and 24.02.2023, respectively, in Paris, France.

176. Three officers participated in the online OECD/KPC Workshop on Competition Law on Digital Platforms held on 10.03.2023.

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

177. 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.

CCI’s engagements with UNCTAD in 2022–23 are as follows:

- Adviser (Economics), participated online as a speaker in the high-level session on “Digital Platform Competition & Data Protection” during the UNCTAD E-commerce, held on 25–29.04.2022.
- Adviser (Law), along with an officer, attended the UNCTAD Volunteer Peer Reviewer (VPR) virtually on 18.05.2022.
- Adviser (ICD) attended the 2nd substantive meeting of the UNCTAD Working Group on cross-Border cartels on 30.05.2022 through the virtual mode.
- Two officers participated in the UNCTAD conference, held on 27–28.06.2022 in Bangkok, Thailand.
- Two officers participated in the 20th session of the UNCTAD Intergovernmental Group of Experts (IGE) on competition law and policy, held on 20–22.07.2022 in Geneva.
- Two officers participated in the Lear Competition Festival in Rome and participated in a session organised by the UNCTAD during 21–23.09.2022.
- One officer attended the online course on “Recent Developments in Competition Policy”, organised by the European University (EUI) in cooperation with the UNCTAD Secretariat in Florence Competition Autumn School during 23–27.10.2022.
- One officer attended the virtual meeting of the UNCTAD Working Group on cross-border cartels, held on 28.10.2022.

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

178. 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 and economics. The details of international delegation received are as follows:

- Delegation led by Md Abdus Sabur, Secretary, and four officers from the Bangladesh Competition Commission visited CCI on an exposure tour during 09–11.05.2022.

- Delegation from the National Policy Committee (Members of National Assembly), Republic of Korea, visited CCI and interacted with the Acting Chairperson and officers of CCI on 30.11.2022.
- Director, BRICS Competition Law and Policy Centre, visited CCI and held a discussion with the Secretary (In-charge) and the Adviser, ICD, CCI, on 15.02.2023.
- Deputy Head of the Federal Antimonopoly Service (FAS), Russia, met Member, CCI, on 20.03.2023 and discussed issues of mutual competition cooperation, including the 8th BRICS ICC 2023.

6. Advocacy efforts

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

- Carrying out market studies in various sectors to understand the functioning and market dynamics thereof and the emergence of competition issues, particularly due to the use of technology, so as to take adequate and appropriate measures to curb likely anti-competitive practices.
- Organising advocacy programmes regularly with industry 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 hand, 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.
- Organising advocacy programmes to build the capacity of various stakeholders.
- Supplementing advocacy efforts and further educating various stakeholders through the 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.

- Under the State Resource Person Scheme (SRP), retired state government officers are engaged to conduct two training programmes every month in various states and union territories, PSUs, departments, etc. The focus of this scheme is to provide information on competition issues and conduct competition advocacy of the Act with multiple stakeholders such as government departments (including procurement officials), PSUs, academic institutions, training academies, and trade associations.

6.1. New initiatives undertaken during FY 2022–23

- The Commission inaugurated two new regional offices in Mumbai (Maharashtra) and Kolkata (West Bengal) to increase outreach and presence in the western and eastern regions of India.
- Advocacy with states was a significant point in the overall outreach programmes of the Commission, augmented through the SRP scheme. As on date, 13 states and union territories have SRPs in place who carry out advocacy programmes. During FY 2022–23, more than 200 programmes were conducted under the SRP scheme. Further, as on date, 29 states and union territories have nominated nodal officers for engagement on competition matters with the Commission.
- The Commission has initiated a Market Study on mining sector in India (with focus on iron ore) in December, 2022 to gain an insight into the competition scenario in the sector.
- Four editions of the Commission’s quarterly newsletter, *Fair Play*, were published and distributed among various stakeholders and uploaded to the Commission’s website in English and Hindi.
- As a step towards reaching out to states for competition advocacy, the Commission publishes competition advocacy booklets in regional languages. Advocacy booklets have been published in English, Hindi, Telugu, Bengali, Marathi, and Tamil for wider outreach. The Commission also released booklets in Gujarati, Assamese, Odia, Malayalam, Kannada, Punjabi, and Urdu.
- The Government of India launched Azadi ka Amrit Mohatsav (AKAM) to celebrate and commemorate 75 years of India’s independence and the glorious history of its people, culture, and achievements. The Commission participated in AKAM by conducting competition outreach programmes and proactively engaging with stakeholders in the competition ecosystem of the country. The following main events were conducted under AKAM:
 - The Commission organised the Eastern Regional Workshop on Competition Compliance in Public Procurement on 25.04.2022, along with the National Law University and Judicial Academy, Guwahati.
 - The Commission organised the National Conference on Competition Law on 11.06.2022 in New Delhi. Simultaneously with the conference, regional advocacy programmes on competition compliance and public procurement were conducted in Bhopal (central region), Odisha (eastern region), Mumbai (western region), and Hyderabad (southern region) through the hybrid mode

- A special issue of *Fair Play* was published by the Commission.
- The Hon'ble Union Minister of Finance and Corporate Affairs, Smt. Nirmala Sitharaman, was the Chief Guest at the 13th annual day of the Commission, celebrated on 20.05.2022. CCI's new website was launched on the occasion.
- The Commission also organised a regional workshop on "Competition Issues in Mergers and Acquisitions", along with Tamil Nadu Dr. Ambedkar Law University, on 25.04.2022.
- The Commission, in association with industry associations, organised various conferences. Conferences were organised in association with the Confederation of Indian Industry in September 2022 and ASSOCHAM in October 2022.
- The Commission organised the 8th National Conference on Economics of Competition Law on 03.03.2023 in New Delhi.
- The Commission conducted the following market studies: (i) Competition and Regulatory Issues Related to the Taxi and Cab Aggregator Industry: With Special Reference to Surge Pricing in the Indian Context; and (ii) The Film Distribution Chain in India.
- 151 students from streams of law, economics, finance, management, and professional courses interned with the Commission.