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### ECONOMIC ANALYSIS IN MERGER INVESTIGATIONS – Contribution from India

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This contribution is submitted by India under Session III of the Global Forum on Competition to be held on 7-10 December 2020.

More documentation related to this discussion can be found at: [oe.cd/mergerinv](https://oe.cd/mergerinv).

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## *Economic Analysis in Merger Investigations*

### **- Contribution from India –**

1. Economic analysis forms an important input for assessment of combination cases in the Competition Commission of India (CCI). It helps in structuring the analysis in terms of identifying theory of harm, delineating relevant product and geographic markets, understanding the market structure and dynamics, and likely effects on competition as a result of proposed combinations. Economic expertise is used at each stage of a merger investigation, from gathering data and collection of information till implementation of remedies.
2. Economists are an integral part of case teams of Combination Division, contributing at every stage of merger review right from initial stage till the end. The composition of case teams include economists, legal professionals, and financial analysts, and at least one economist is part of each case team. In addition, there is a separate Economics Division in the Commission that provides independent assessment of cases that are referred to it depending on the complexity and nature of the case. This reflects the emphasis on economic analysis placed in the assessment of cases.
3. The Commission employs a wide spectrum of Economic tools and techniques including both quantitative and qualitative analyses. The quantitative analysis most often applied in the assessment of merger reviews are concentration ratios and price analysis in order to check the likely effects on competition in the markets. Apart from Market share, HHI and Concentration ratio, the Commission uses various other tools and techniques such as diversion ratios, churn rates etc. wherever warranted. Techniques such as Elzinga – Hogarty test (Case Study – 1) are used for delineating the relevant geographic market wherever required. Data and information are collected from the parties and in some cases Commission also seeks information from customers, competitors and other third parties. Data is also collected by conducting survey (Case Study – 2). In cases where parties to the combination are involved in sectors such as Telecommunications, Agriculture, Iron & Steel (Case Study – 3) etc. that are characterised by specific economic considerations and require specialised knowledge, the Commission also considers inputs from Experts in the concerned sector. Further, in cases where special economic dynamics are manifested in the markets, the parties submit Economic Reports as part of the Notice, which are also perused and considered. The Commission also relies upon qualitative analysis while considering the non-price effects of mergers such as innovation, portfolio effects or future strategy of the parties or other players in their respective industries., (Case Study – 4). As part of merger assessment, the Commission also scrutinises the working of algorithms and use of data in case of new age markets that are dynamic and exhibit network effects. (Case Study – 5).

### **1. Case Study – 1**

4. In case C-2020/03/734, Nuvoco Vistas Corporation Limited (NVCL) proposed to acquire shares of Emami Cement Limited (ECL). Both NVCL and ECL are engaged in production and sale of varieties of grey cement including Portland Pozzolana Cement (PPC), Portland Slag Cement (PSC) and Ordinary Portland cement (OPC).

5. The Commission used price analysis in addition to considering the nature and characteristics of distribution such as overhead costs, transportation, nature of purchasers, minimum order quantity requirements etc. in bringing out the differences in the mode of distribution, and prices between cement supplied through trade mode of distribution and cement supplied through non-trade mode of distribution. This economic analysis helped the case team in exploring the possibility of considering trade and non-trade segment of cement sales as separate markets rather than only analysing the entire cement market as a whole. It was noticed that such an analysis was required as the economic factors such as countervailing buying power, and conditions on minimum quantity in case of non-trade segment, and significance of distribution network in case of trade segment affecting each of these modes of distribution are different. The competition assessment was carried out considering both the modes separately and also on combined basis before concluding that there is no appreciable adverse effect on competition.

6. Further, the Commission used the Elzinga-Hogarty (LIFO-LOFI) test by analysing consumption and production data of cement in different states starting with those states where the combining parties are present and then extending to other neighbouring states, in order to delineate relevant geographic markets. This analysis was undertaken in both trade and non-trade segments separately, and on combined basis. The said tests have been applied in a manner that ensures that the market definition thus arrived at reflects the most relevant constraints on the behaviour of the Parties.

## 2. Case Study – 2

7. In case C-2018/07/586, Schneider Electric India Private Limited (**SEIPL / Schneider**), a subsidiary of Schneider Electric SE (**Schneider**) proposed to acquire the electrical and automation (**E&A**) business of Larsen & Toubro Limited (**L&T**), as a going concern, on a slump sale basis. Schneider is present in power management business [i.e. medium voltage (MV), low voltage (LV) and secure power], and in automation systems. Schneider provides integrated efficiency solutions, combining energy, automation and software services. The E&A Business of L&T comprises manufacture and sale of low and medium voltage switchgear components, custom built low and medium voltage switchboards, electronic energy meters/ protection (relays) systems, control and automation products. The E&A business offers a wide range of products and solutions for electricity distribution and control in industries, utilities, infrastructure, buildings and agriculture sectors. The overlapping products include components of either main LT Panel / switchboard (for connecting large industrial or commercial buildings to the medium-voltage network) or Sub Main LT Panel/ switchboard (typically used for floors in buildings) or a final panel board (for end users with low energy requirements, such as an occupant of an apartment).

8. The Commission raised *prima facie* concerns that the proposed combination is a consolidation of two closest competitors in the LV switchgear industry in India who are also the first and second leading players. In the conventional markets, the combined market share and change in HHI as a result of proposed combination are significant indicators of increased concentration.

9. The Commission conducted a separate market investigation and gathered information regarding the concerned markets from panel builders, distributors and electricity consultants in addition to considering the public comments received and submitted by the parties in the process of investigation.

10. Although the activities of the Parties exhibited horizontal overlap in respect of 29 products, the economic analysis of consumer behaviour, industry discipline and behaviour of market intermediaries suggested the significance of cluster pattern of the markets and portfolio effects in the industry. Such analysis further enabled the Commission to determine that remedies in respect of six products would enable competitors to build their portfolio, and effectively compete with the combined entity at an all-industry level. Thus the Commission accepted the voluntary modifications submitted by the parties to provide white-labelling services in items used in the panel board.

### 3. Case Study – 3

11. In case C-2018/07/586, Tata Steel Limited (**TSL**) proposed to acquire more than 75 per cent of the total equity share capital of Bhushan Steel Limited (**BSL**). TSL is engaged in integrated steel manufacturing operations ranging from mining to steel-making and further downstream processing. The annual crude steel capacity across Indian operations of TSL is stated to nearly 13 million ton per annum (“**MTPA**”). BSL is also engaged in integrated steel manufacturing operations, including downstream processing. There were overlaps in the manufacture and sale of various finished flat carbon steel products viz: Hot rolled coils and sheets (**HR-CS**) and plates (**HR-P**) (together, **HR-CSP**), Cold rolled coils and sheets (**CR-CS**), Surface coated products (**SCP**) (including galvanized products (**GP**) and colour coated products (**CCP**), and Flat steel tubes and pipes (**T&P**) (including precision and non-precision T&Ps) in India.

12. TSL and BSL are two of the few integrated steel manufacturing entities in India and their combination may raise doubts of increase in market concentration. However, economic inputs from Sectoral Expert including the nature of Iron & Steel industry and competitive constraints from imports in case of HR-CSP, CR-CS, and CCP were also considered by the Commission in approving the transaction unconditionally.

### 4. Case Study – 4

13. In case C-2019/10/703, ZF Friedrichshafen AG (**ZF**) proposed to acquire 100% shareholding of WABCO Holdings Inc. (**WABCO**). Both ZF & WABCO were present in India through subsidiaries and joint ventures. The business activities of ZF are conducted through various subsidiaries and joint ventures including Brakes India, which is a JV between ZF (49%) and TVS (51%). WABCO and its subsidiaries are also engaged in the sphere of auto components/ systems relating to brake, clutch, steering and certain embedded software products used in Passenger Vehicles (**PV**), Commercial Vehicles (**CV**) and Off-Highway Vehicles (**OHV**).

14. At the first look, incremental market shares appeared to be very minimal as one party is stronger in hydraulic braking system while the other is majorly present in pneumatic braking system. However, economic analysis of market dynamics in brake and clutch components revealed that the market is likely to converge to one type of product or hybridization and the likelihood of one player becoming a contender in the other system. This led to the *prima facie* finding that post combination, the combined entity would constitute substantial supply of brake and clutch components/ system for CVs in India. Accordingly, the proposed combination, *prima facie*, appeared to reduce/ eliminate the incentives of WABCO and Brakes India (JV of ZF) to compete in terms of price, products, innovation in the market of foundation brakes and clutch systems for commercial vehicles in India.

15. The Commission observed that there were limited number of players in the abovementioned segments, and as a result of the proposed combination, incentives for Brakes India to innovate, offer complete portfolio of products in brake system for CVs and turn as a full systems player, was likely to be reduced. ZF submitted voluntary modification wherein it proposed to divest its 49% shareholding, and all rights and arrangements thereof, in Brakes India.

## 5. Case Study – 5

16. In case C-2019/09/682, Hyundai Motor Company (**HMC**) and Kia Motors Corporation (**KMC**) proposed to acquire shares in ANI technologies Pvt. Ltd. (**ANI/OLA**) and Ola Electric Mobility Private Limited (**OEMPL**). HMC and KMC are engaged in the business of manufacturing and distribution of automobiles, automobile parts and accessories, after-sales service, research and development of automotive engineering across several countries. OLA is a ride-sharing company that facilitates transportation services through an online platform. It also undertakes various incidental activities either directly or through its subsidiaries and affiliates. One of its affiliates, Ola Fleet Technologies Private Limited (**OFT**) is engaged in leasing commercial passenger vehicles to individuals.

17. Although the investment by **HMC and KMC** were less than 10%, economic analysis of the strategic commercial collaboration between the Parties revealed that the combination is likely to result in preferential treatment. The Commission analysed the online system of the OLA App and process of matching a passenger and a cab in OLA marketplace platform, and sought further clarifications to assess likely preferential treatment on OLA platform to drivers owning HMC or KMC vehicles, noting that the consumer who is booking from the OLA App does not have the ability to distinguish (or opt) between OFT leased cars or a non-OFT vehicle. The Parties submitted voluntary modification stating that the strategic collaboration between the Acquirers and OLA would be on a non-exclusive basis.

## 6. Conclusion

18. The application of economic concepts in the merger investigation is evidently helping the Commission take a balanced view of proposed combinations weighing the likely harm and benefits due to the proposed combinations. Some of the multiple instances where the economic inputs played a decisive role are discussed in the above case studies. The fact that majority of the economic inputs are derived from basic economics such as HHI, critical loss etc. compared to more complicated econometric techniques which are used occasionally, helped the case teams in explaining the effects in simplified way to the decision makers. This in turn has resulted in final decisions that strike a balance between reducing the consumer harm on one hand and increasing efficiencies and innovation from the other. Secondly, our analysis has also been helpful in explaining to the parties, the likely harm to competition and has led to parties offering voluntary remedies.