



# CRITICAL COMPETITION

## COMPETITION LAW NEWSLETTER

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## ENFORCEMENT ORDER

### I. DELHI HIGH COURT RULED THAT PROCEEDINGS BEFORE THE COMPETITION COMMISSION OF INDIA WILL NOT BE INVALIDATED DUE TO LACK OF QUORUM OF MEMBERS

The single judge bench of the Delhi High Court vide its order dated 24.04.2023 held that any defects or vacancies in the constitution of the Competition Commission of India (CCI) would not invalidate any proceedings before it. The findings made by the single judge were in furtherance of the writ filed by the Alliance of Digital India Foundation (ADIF), which represents a group of startups in India, alleging non adjudication by the antitrust regulator of the application filed by AIDF under section 42 of the Competition Act, 2002 (Competition Act), against Google for non-compliance of the CCI's final order dated 25.10.2022 on the ground of lack of quorum. Before the Delhi High Court, the ADIF contended that a direction be issued to the CCI to invoke the 'doctrine of necessity' for initiating non-compliance proceedings against Google.

ADIF by way of an application before the CCI had submitted that Google's User Choice Billing program for the Play Store developers does not materially alter the original

commission system of Google, which was found to be discriminatory by way of the CCI's order passed under Section 27 of the Competition Act. However, the said application could not be taken up by the CCI due to lack of quorum as it currently had only two members as against the valid quorum that requires at least three members as per the proviso to Section 22 (3) of the Competition Act.

The Delhi High Court held that under Section 15 of the Competition Act, any vacancy or defects in the constitution of the Hon'ble Commission cannot invalidate proceedings before it. The bench also noted that a "quorum" of three members is only limited to conducting administrative meetings of the CCI and has no nexus with the adjudicatory process. Accordingly, the High Court held that there is no legal impediment in the CCI taking up the application filed by ADIF.

### II. NCLAT SETS ASIDE THE PENALTY OF INR 5 LAKHS IMPOSED ON ITC LIMITED (ITC) FOR GUN JUMPING

The CCI has initiated gun jumping proceedings against ITC for not notifying the purchase of two trademarks of 'Savlon' and 'Shower and Shower' from Johnson & Johnson in February 2015 to



the CCI. ITC had contended before the CCI that the said acquisition of trademarks does not amount to 'acquisition of an enterprise' as specified under Section 5 of the Competition Act and therefore, the acquisition of the trademarks is not required to be notified to the CCI. It was also contended by ITC that the acquisition of the trademarks benefited from Item 3 of Schedule I of the Combination Regulations which exempts any acquisition of assets not directly related to the business activity of the party acquiring the asset or made solely as an investment or in the ordinary course of business, not leading to control of the enterprise whose assets are being acquired. ITC also contended that it benefited from the De Minimis Exemption provided under the law and that for the purpose of the De Minimis Exemption the value of assets and turnover only attributable to the trademarks must be considered. It placed reliance on a subsequent notification of the Ministry of Corporate Affairs (MCA) dated 27.03.2017 which had clarified that in order to assess the availability of the De Minimis Exemption, the size of the asset being acquired is relevant and not the size of the party from whom the asset is being acquired.

The CCI held that ITC had contravened Section 43A of the Competition Act for gun jumping on the basis that (1) acquisition of assets amounted to combination for the purposes of Section 5 of the Competition Act if the jurisdictional thresholds are crossed, (2) Item 3 of Schedule I of the Combination Regulations was not available, and, (3) the MCA's notification dated 27.03.2017 was not clarificatory in nature and did not have retrospective effect. Considering the totality of the facts, a penalty of INR 5,00,000 was levied on ITC.

On appeal before the National Company Law Appellate Tribunal (NCLAT), NCLAT has set aside the order of the CCI on the grounds that the MCA's notification dated 27.3.2017 was of a clarificatory nature and gives a purposive construction to the earlier De Minimis notifications dated 4.3.2011 and 4.3.2016 and therefore, it would have retrospective effect. As such, the acquisition of trademarks by ITC was held to be exempt from notification to the CCI.



## COMBINATION ORDERS

### III. CCI APPROVED THE ACQUISITION OF MAJORITY EQUITY SHARE CAPITAL OF SREI INFRASTRUCTURE FINANCE LIMITED BY NATIONAL ASSET RECONSTRUCTION COMPANY LIMITED (NARCL) AND INDIA DEBT RESOLUTION COMPANY LIMITED (IDRCL)

The CCI approved the acquisition of majority of the equity share capital of SREI Infrastructure Finance Limited by NARCL and IDRCL under the green channel route. The acquisition is pursuant to the resolution plan submitted by NARCL in relation to the corporate insolvency resolution process of the SREI Infrastructure Finance Limited and its wholly owned subsidiary, SREI Equipment Finance Limited. NARCL is an 'asset reconstruction company' under the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002. IDRCL was set up with a primary objective of providing debt management services including resolution of stressed assets, to NARCL. SREI Infrastructure Finance Limited and its subsidiaries are broadly engaged in providing financing/leasing for procurement of infrastructure equipment used in construction, roads,

mining, railways, port and other infrastructure sectors; infrastructure project advisory services; financial advisory services; insurance broking services; and merchant banking services.

### IV. CCI APPROVED THE ACQUISITION OF UP TO 76.10% OF THE VOTING SHARE CAPITAL OF SUVEN PHARMACEUTICALS LIMITED (SPL) BY BERHYANDA LIMITED.

The CCI approved the acquisition of up to 76.10% of the voting share capital of SPL by Berhyanda Limited by way of a share purchase agreement and pursuant to the mandatory open offer in compliance with the SEBI regulations. Berhyanda Limited is a wholly owned subsidiary of Berhyanda Midco Limited which is a wholly owned subsidiary of Jusmiral Midco Limited, which is collectively controlled by the funds managed by Advent International Corporation. SPL is a bio-pharmaceutical company and also engaged in offering services relating to integrated contract development and manufacturing organization.



V. CCI APPROVED THE ACQUISITION OF STAKE IN MUKAND SUMI SPECIAL STEEL LIMITED (MSSSL) BY JAMNALAL SONS PRIVATE LIMITED (JSPL) FROM MUKAND LIMITED

The CCI approved the acquisition of 25,71,150 equity shares of MSSSL constituting 5.51% of the equity share capital of MSSSL from Mukand Limited and its nominees by JSPL. Both JSPL and Mukand are part of the same group, and the proposed combination is an intra-group transfer. JSPL is an unregistered core investment company holding shares in various Bajaj Group Companies. JSPL is primarily an investment and lending company and is not engaged in the manufacturing or trading of any goods. MSSSL is engaged in the business of manufacturing, marketing, selling, distribution etc. of special and alloy steel, hot rolled bars and hot rolled wire rods.

VI. CCI APPROVED THE ACQUISITION OF CERTAIN SHAREHOLDING OF BTS INVESTMENT I PTE. LTD. (BTS INVESTMENT) AND BODHI TREE SYSTEMS VCC (BTS VCC) BY NBC UNIVERSAL MEDIA, LLC (NBC UNIVERSAL)

The CCI approved the acquisition of certain shareholding of BTS Investment and BTS VCC by

NBC Universal. A portion of the proceeds of the acquisition by NBC Universal will be used by BTS Investment for further investment into Viacom18 Media Private Limited. NBC Universal is a multinational media and entertainment company engaged in the development, production and marketing of entertainment, news and information to global audiences. BTS Investments is a private company incorporated under the laws of Singapore and BTS VCC has been incorporated under the laws of Singapore, with the purpose of raising capital from various investors for investing in media and entertainment, education, consumer health and other consumer-related sectors in the Indian Ocean region, with a particular emphasis on India.

VII. CCI APPROVED THE ACQUISITION A MAJORITY STAKE IN THE CLIMATE TECHNOLOGIES BUSINESS OF EMERSON ELECTRIC CO. BY BCP EMERALD AGGREGATOR L.P.

The CCI approved the acquisition of a majority stake in the climate technology business of Emerson Electric Co. by BCP Emerald Aggregator L.P (BCP) and an investment by Stamford Bridge Investment Pte. Ltd. and Platinum Falcon B 2018 RSC Limited (Co-Investors) in BCP, under the green channel



route. BCP is a Delaware limited partnership, that was recently incorporated for the purpose of the acquisition. It is managed by an affiliate of funds advised and managed by the affiliates of Blackstone Inc. Emerson Electric Co is an American multinational corporation headquartered in Missouri, United States of America which designs and manufactures products and provides various engineering services for industrial, commercial and consumer markets. The Co-Investors are investment holding companies.

**VIII. CCI APPROVED MERGER BETWEEN KONINKLIJKE DSM N.V. (DSM) AND FIRMENICH INTERNATIONAL SA (FIRMENICH)**

The CCI approved a merger between DSM and Firmenich to form DSM-Firmenich, a Swiss domiciled company whose shares are proposed to be listed on Euronext Amsterdam. DSM is a public limited liability company incorporated under the laws of Netherlands. DSM is the ultimate parent company of the DSM group engaged in the business of nutrition, health, and bioscience. Firmenich is a privately owned company, headquartered in Geneva, Switzerland. Firmenich is engaged in the production and supply of fragrances, flavours, aroma

chemicals, rosin resin and turpentine.

**IX. CCI APPROVED THE DEMERGER OF FMCG BUSINESS OF HALDIRAM SNACKS PRIVATE LIMITED (HSPL) AND HALDIRAM FOODS INTERNATIONAL PRIVATE LIMITED (HFIPL) AND ACQUISITION OF 56% AND 44% SHAREHOLDING IN HALDIRAM SNACKS FOOD PRIVATE LIMITED (HALDIRAM SNACKS) BY EXISTING SHAREHOLDERS OF HSPL AND HFIPL**

The CCI has approved the demerger of the FMCG businesses of HSPL and HFIPL (currently housed under HSPL and HFIPL and their various associates / subsidiaries), into Haldiram Snacks. The demerger is through an NCLT approved Scheme of Arrangement and once the same is completed, the existing shareholders of HSPL and HSFPL will acquire 56% and 44% shareholding in HSFPL. HSPL and HFIPL are engaged in the manufacture and distribution of packaged food products in India including snacks, sweets, biscuits, non-carbonated drinks etc. Haldiram Snacks is a newly incorporated entity which does not have any business operations in India.



X. CCI APPROVED SHARE-SWAP FOR THE ACQUISITION OF THE C-FLEX INDIA ENTITIES BY S.B. PACKAGINGS PRIVATE LIMITED (SBP) FROM C-FLEX, IN CONSIDERATION FOR WHICH C-FLEX WILL BE ISSUED CERTAIN SHAREHOLDING IN SBP

The CCI has approved combination involving the share-swap for the acquisition of the C-Flex India entities by SBP from C-Flex. In consideration for the same, C-Flex will be issued certain shareholding in SBP. SBP is engaged in the manufacturing of flexible packaging materials. SBP is a portfolio entity of PI Opportunities Fund I Scheme II, which is a fund owned and controlled by the Premji Invest Group. C-Flex group is engaged in the production and sale of flexible packaging materials. C-Flex is ultimately owned and controlled by WENDEL S.E and has presence in India through certain C-Flex India entities.

XI. THE CCI APPROVED THE ACQUISITION OF SHAREHOLDING BY INDIA BUSINESS EXCELLENCE FUND – IV OF VVDN TECHNOLOGIES PRIVATE LIMITED

The CCI approved the acquisition of shareholding by India Business Excellence Fund – IV (IBEF) through a combination of secondary share purchases of equity shares and subscription to compulsorily convertible debentures of VVDN Technologies Private Limited (VVDN), under the green channel route. IBEF is a Category II alternative investment fund registered with the Securities and Exchange Board of India. It primarily invests in equity and equity-linked instruments and/or debt and/or mezzanine or other instruments of Indian or India related companies. VVDN is engaged in the business of providing electronics manufacturing services and original design manufacturing services.



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