



CRITICAL COMPETITION
COMPETITION LAW NEWSLETTER
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ENFORCEMENT ORDERS

1. THE CCI DISMISSED ALLEGATIONS OF ABUSE OF DOMINANCE BY HERO FINCORP LIMITED

The Competition Commission of India (CCI) dismissed an information (complaint) filed by Synco Industries Limited (Synco) against Hero FinCorp Ltd. (HFL) for alleged contravention of Section 4 of the Competition Act, 2002 Act (Act). It was alleged that HFL, which is a non-banking financial company (NBFC) registered with the Reserve Bank of India (RBI) was imposing arbitrary and usurious charges for various services, manipulating floating interest rates, and disregarding reductions in the repo rate to overcharge borrowers. It was alleged that the conduct of HFL of not allowing the reduction in interest rate charged in accordance with the reduction in repo rate by the RBI and imposition of switching fees for giving effect of reduction in interest rate amounts to an abuse of dominant position by HFL.

The CCI noted that in addition to the presence of numerous NBFCs in the “market for provision for loan against property in India”, there are multiple financial institutions within the category of public sector banks, private sector banks, regional rural banks etc. that compete amongst themselves for extending loans against property to eligible borrowers. Therefore, in the absence of any evidence of dominance of HFL, the CCI dismissed the need to analyse any abuse thereof.

2. THE CCI DISMISSED COMPLAINT ALLEGING ABUSE OF DOMINANCE BY CUREFIT

The CCI dismissed an Information filed by Creed Gym (Informant) against Curefit Services Pvt. Ltd. (Curefit / Opposite Party), which offers subscription services under the name Cult-Pass, allowing the benefit of using multiple gyms across India to its members. The Informant alleged that it entered into a collaboration agreement with Curefit, which provided that all the customers including those of the Informant could avail services of the Informant only through Curefit’s platform. The Informant alleged that Curefit is committing data exploitation by partnering with more than 300 gyms/fitness centres and using their data to endorse and sell its own products thereby, abusing its dominant position.

The Informant also highlighted that Clause 9 of the collaboration agreement stipulated that Curefit will not collaborate with any other third-party gym within a radius of 2 Km from Informant’s gym. The Informant alleged that the breach and subsequent deletion of the said clause from the collaboration agreement also amounted to abuse of dominance by Curefit. Additionally, in the context of allegations under Section 3 and Section 4 of the Act, the Informant highlighted other incidental issues such as denial of payments to the Informant by Curefit, extension of discount schemes without



consultation, sharing of Informant's confidential information with its competitors and Tata Neu platform without consent, restriction on the Informant from providing its services to the customers directly, denial of access to the customer database, and unilateral termination of collaboration agreement.

The CCI observed that the Informant has not been able to raise any concern which may be anti-competitive in terms of Section 3 of the Act. The CCI observed that the Informant's allegation of improper sharing of data is not supported by any conclusive material and the deletion of Clause 9 would result in an increase in the intra-brand competition by providing an opportunity to other gyms and fitness centers in the locality to associate with Curefit.

Furthermore, taking note of the dynamic and evolving nature of the online market for fitness services, the CCI concluded that Curefit does not exercise a dominant position and there is no material on record to indicate that there exists any barrier for market participants in providing or accessing online fitness services. The CCI is of the view that an exact delineation of relevant market is not required as it would not materially impact the assessment of dominance. In the absence of dominance, there is no occasion for the CCI to look into alleged abusive conduct. Therefore, the CCI was of the

opinion that there exists no *prima facie* case of contravention of the provisions of Sections 3 and 4 of the Act and accordingly, the matter was closed under Section 26(2) of the Act.

3. THE CCI DISMISSED ALLEGATIONS OF ANTI-COMPETITIVE CONDUCT BY ASSOCIATION OF CERTIFIED FRAUD EXAMINERS INC.

The CCI dismissed an information (complaint) filed against Association of Certified Fraud Examiners Inc., (ACFE), M/s. Netrika Consulting India Private Ltd. (NCIPL) and the Open Thinking Academy (OTA) alleging violation of Section 3 (anti-competitive agreements) and Section 4 of the Act. The informant, Mrs. Kanwaljeet Kaur Soni was engaged in coaching aspirants for the Certified Fraud Examiner (CFE) examination, using ACFE's course material. ACFE provided study support for the CFE certification to train aspirants, and appointed NCIPL and OTA as Authorised Training Partners (ATP) for the same. The informant coached aspirants for the CFE certifications using ACFE's course material at a significantly lesser price than that charged by ACFE. In 2019, ACFE had communicated to the informant that they could not be their ATP, since they had entered into an agreement with NCIPL.

It was alleged that ACFE abused its dominant position by imposing unfair and discriminatory conditions in its byelaws, which restricts the supply of preparatory services offered by third parties



who are not ATPs of ACFE, to aspirants preparing for CFE exams. ACFE had alleged an infringement of its copyrights and trademarks rights by the informant and also issued several cease-and-desist notices. It was also alleged that the agreements between ACFE and ATPs created entry barriers for potential tutors and has caused an appreciable adverse effect on competition (AAEC) in contravention of Section 3(4) of the Act (vertical anti-competitive agreements).

The CCI on analysis, without finding it necessary to examine the conduct on merits, observed that the restrictions imposed by ACFE were not against the creation of study material for the CFE exam but against the infringement of ACFE's intellectual property rights. Accordingly, the CCI noted that no case for the violation of the provisions of the Act was made out and dismissed the case.

4. THE CCI REITERATED THAT A PROCURER HAS THE RIGHT TO STIPULATE PROCUREMENT CONDITIONS TO OPTIMISE ITS BENEFITS

An information had been filed under Section 19(1)(a) of the Act by XYZ(Confidential) (Informant) alleging that H.N.B Garhwal University and Others (**Opposite parties / OPs**) are higher educational institutions and they had floated tenders for the procurement of books for their libraries, which contained restrictive terms and conditions.

Therefore, it was alleged that the OPs had violated of Section 3 and Section 4 of the Act.

The CCI dismissed the said information for the lack of a *prima facie* case against Ops and noted that apart from making passing reference to the violation of Section 3 of the Act, the Informant failed to provide specifics of the alleged anti-competitive acts of the Opposite Parties. In relation to allegations under Section 4 of the Act, the CCI held that the structure of the market for supply of books is such that there are numerous market players, and the Informant can supply the books to a number of other institutions/organizations and is not necessarily dependent on OPs. Consequently, the CCI did not find it necessary to delineate the relevant market to assess dominance and accordingly, the matter was closed under Section 26(2) of the Act.

5. THE CCI DISMISSED ALLEGATIONS AGAINST CENTRAL/STATE AGENCIES ALLEGING ABUSE OF DOMINANCE FOR MANDATING TESTING OF REQUISITIONED MATERIAL BY NABL ACCREDITED LABORATORIES

The CCI dismissed an information (complaint) filed against Central/State agencies for alleged contravention of Section 3(4) and Section 4 of the Act. The informant was engaged in the business of providing engineering material testing laboratory services. It was alleged that the opposite parties, through their circulars or clauses in their Tenders/Expressions of



Interest prescribed the testing of requisitioned construction material by laboratories accredited by National Accreditation Board for Testing and Calibration Laboratories (NABL), as a necessary condition for procurement of services of laboratories. It was alleged that NABL and the opposite parties have an arrangement to outcast the laboratories accredited by other accreditation bodies.

It was further contended that NABL entered into agreements with the opposite parties mandating them to be accredited with only NABL, which is in contravention of Section 3(4) of the Act (vertical anti-competitive agreements). In this regard, the CCI held that there is no cogent evidence indicating the existence of any exclusive arrangement in favour of NABL, in the absence of which no contravention can be determined.

It was also alleged that accreditation with NABL mandated by the opposite parties provides a virtual monopoly to NABL with regard to the supply of products/ services of granting accreditation certificate to laboratories thereby creating entry barriers in the market. The CCI noted that the market for services of laboratories for testing materials are not majorly dependent on work from the opposite parties and there are several other players and entities needing laboratory services and may have procured on similar terms and condition as the

opposite parties. Accordingly, the CCI dismissed the case, noting that the opposite parties are not dominant.

6. THE CCI DISMISSED A COMPLAINT AGAINST NABL ALLEGING ANTI-COMPETITIVE ARRANGEMENT WITH GOVERNMENT DEPARTMENTS AND ABUSING THEIR DOMINANT POSITION

The CCI dismissed an information (complaint) filed against NABL for alleged contravention of Section 3 (anti-competitive agreements) and Section 4 (abuse of dominance) of the Act. It was alleged that certain circulars issued by departments/ministries of the Government of India, allegedly promoted NABL as the desired accreditation body in violation of Section 3 of the Act (anti-competitive agreements). The CCI noted that prescription by the Government to its department for following a certain standard which has a direct relevance to the quality of products/ services cannot be presumed to be in contravention of the Act, especially in the absence of any agreement demonstrating the same.

It was also alleged that NABL attained a position of dominance in the market for accreditation services to laboratories in India, due to the collective operation of circulars issued by various Government departments as well as the mandates issued by NABL to the laboratories/Conformity Assessment Bodies (CABs). The alleged unfair terms included terms requiring mandatory usage



of the NABL logo by the laboratory, mandatory equipment calibration at a facility authorized by NABL, unannounced assessments, mandatory proficiency testing, and barring accreditation to laboratories structured as proprietorships or partnerships. The CCI held that NABL's market power cannot be per se equated to dominance in the relevant market. Nonetheless, it held that NABL's alleged unfair terms were imposed with the purported objective of maintaining quality standards and operational efficiency, and the same cannot be *prima facie* said to raise any competition concern. Accordingly, the case was dismissed.

7. THE CCI HOLDS CHEMISTS' ASSOCIATIONS LIABLE FOR INDULGING IN ANTI-COMPETITIVE ARRANGEMENTS

The CCI held district and tehsil level chemists' associations in Sriganganagar district in Rajasthan in contravention of Section 3(3)(a) (determining sale prices) and Section 3(3)(b) (limiting production and supply) read with Section 3(1) of the Act based on an information (complaint) filed by Solar Life Sciences Medicare Private Ltd. (Solar).

It was alleged that the chemist's association would collectively determine and suggest margins and incentive schemes for manufacturers/suppliers of pharmaceutical products, and if these margins and incentives schemes were not offered to the chemists, the products of Solar

were boycotted. Further, punitive measures were implemented against non-compliant manufacturers/suppliers such as Solar.

The CCI analysed the findings of the Investigation Report of the Director General, depositions of the Presidents of the chemists' associations and noted that the decision of boycott/non-cooperation was a consequence of the discontentment with the high MRP, margin schemes and stockist. The CCI observed that chemists play an important role in the value chain of pharmaceutical products and any boycott will directly affect the availability of the said product in the market. Furthermore, the CCI held that for the purpose of Section 3(3), determination of prices or supplies may include any manifestation of control over prices such as seeking higher margins through the issuance of diktats of non-cooperation and boycott as done in the present case.

Consequently, the CCI held the associations and their office-bearers to be liable under Section 3(3)(a) and 3(3)(b) of the Act. However, the CCI did not impose a penalty on the associations or its directors and directed them to cease and desist from indulging in similar anti-competitive practices.



8. THE CCI DISMISSED COMPLAINT AGAINST TATA MOTORS ALLEGING ABUSE OF DOMINANCE

An Information was filed against Tata Motors Limited (TML), Tata Capital Financial Services Limited (TCFSL), and Tata Motors Finance (TMF) alleging contravention of Sections 3 and 4 of the Act by Ms. Neha Gupta (Informant), whose parents had established Varanasi Auto Sales Pvt. Ltd. (VASPL) as an authorised dealer of TML. It was *inter alia* alleged that TML, in abuse of its dominant position, had coerced its dealers and imposed unreasonable terms on them as a part of the dealership agreement. It was further alleged that every authorized dealer of TML was compelled to secure finance or loans from TCFSL and TMF only. The CCI, finding a prima facie case, directed the DG to conduct an investigation under Section 26(1) of the Act against TML for the violation of Section 4(2)(a)(i), 4(2)(c), 4(2)(d), and 3(4)(c) of the Act; however, no such investigation was directed against TMF and TCFSL as they were not found to command significant market power in the concerned verticals.

On analysing the DG's Report, the CCI observed that merely mentioning a clause requiring dealers to seek a no objection certificate from TML prior to starting a new business in the absence of anything on record to show that such NOC has been withheld is not in itself in contravention of provisions of Section 4(2)(a)(i) or 4(2)(c) of the Act. The CCI also observed that that

there is not enough evidence given by the Informant to show that TML has ever refused permission to any of its dealers from starting, acquiring, or indulging in a new business.

The CCI further held that the DG has found TML to be in contravention of provisions of Section 4(2)(a)(i) and 4(2)(d) of the Act and had only relied on communications of TML with VASPL and no other dealer, therefore, does not agree with the finding of the DG that TML coerced its dealers to offtake vehicles as per its demands. Moreover, after observing that evidence relied upon by the DG in arriving at a finding of contravention of Section 3(4)(c) of the Act does not prove that TML prohibits passive sales and imposes any penalty on its authorised dealers for actively selling outside their allocated territory. In view of the above, no case of contravention of the provisions of Sections 3 and 4 of the Act is made out against TML.

9. THE CCI HELD THAT EX FACIE BASELESS LITIGATION INITIATED WITH AN INTENTION TO ELIMINATE COMPETITION MAY AMOUNT TO ABUSE OF DOMINANCE

The information was filed by Macleods Pharmaceuticals Limited (Informant) under Section 19(1)(a) of the Act against Boehringer Ingelheim Pharma GmbH & Co. KG (OP 1) and Boehringer Ingelheim India Private Limited (OP 2), (hereinafter, collectively referred to as the "OPs"), alleging



contravention of Section 4(1) read with 4(2)(c) of the Act. OPs are engaged in the pharmaceutical business and hold two patents over the 'Linagliptin,' which is used for the treatment of Type 2 diabetes. While one of the patents has expired, it has been alleged that the OPs have filed multiple patents to artificially extend the patent protection beyond the stipulated period of 20 years, causing and AAEC in the market, resulting in higher prices of drugs and denial of market access as no other competitor can enter the market including the Informant. The OPs *inter alia* initiated multiple patent litigation against the Informant and sent communications to doctors, asking them to not deal with the Informant and other competitors, which amounts to abuse of dominance.

The CCI held that in order to determine whether the concerned litigation is an abusive conduct of a dominant player, two conditions must be satisfied. First, the case filed against an enterprise, from an objective view, is baseless and appears to be an instrument to harass the enterprise. The litigation must be *ex facie* baseless. Second, it needs to be examined whether the legal action appears to be conceived with an anti-competitive intent to eliminate/thwart competition in the market.

The CCI after considering the established jurisprudence worldwide, observed that in matters relating to frivolous litigation resulting in alleged abuse

of dominance such as this, the main aim is to investigate the matter objectively as to whether the litigation resorted to by the dominant entity is *ex facie* baseless. However, the disputes pertaining to the validity of patents are not the domain of the CCI and a *prima facie* view cannot be formed at this stage. Consequently, the CCI passed an order under Section 26(2) of the Act, closing the complaint.

10. THE CCI DISMISSED AN INFORMATION AGAINST SEPSON AB AND ITS GROUP ENTITIES AND SEPSON INDIA PRIVATE LIMITED FOR ALLEGED CONTRAVENTION OF THE ACT

The CCI dismissed allegations of anti-competitive conduct by Sepson AB, Sweden and its group entities (**Sepson AB**) and Sepson India Private Limited (**Sepson India**) based on an information filed by Transvahan Technologies India Pvt. Ltd (**TTIPL**) and Mr. S. R Venkatesan.

The informants and Sepson AB formed a strategic alliance to promote and supply winches in India to the Indian Army. In 2014, Sepson AB and TTIPL entered into a Sub-contracting and Manufacturing Agreement (**SCM**) for TTIPL to manufacture and assemble winches for military vehicles. Subsequently, in 2014, Sepson AB established Sepson India and appointed Mr. Venkatesan as a Director and Managing Director. A detailed SCM-2015 was also entered into, making TTIPL the exclusive



manufacturing contractor for Sepson India. The SCM-2015 also included a condition which tied the contract to Mr. Venkatesan's employment agreement with Sepson India. Upon resignation by Mr. Venkatesan as Managing Director and eventually as Director, Sepson AB ended their association with TTIPL, which was alleged to be an unfair term in contravention of the Act.

On analysis, the CCI dismissed the case and noted that the dispute emanated from contractual terms and no competition concerns arose from the same, and hence no prima facie case was made regarding the allegations.

11. THE CCI HELD THAT NON-DISCLOSURE OF DATE OF DELIVERY OF POSSESSION BY CHANDIGARH HOUSING BOARD IS ABUSE OF DOMINANCE

An Information was filed against Chandigarh Housing Board (CHB) for the alleged violation of Section 4 of the Act in relation to a Self-Financing Housing Scheme (scheme), wherein CHB was offering 160 flats on a freehold basis in Chandigarh. The Informant, being one of the allottees under the said scheme, alleged that the terms imposed by CHB were unfair, exploitative, and in contravention of the provisions of Section 4 of the Act. The CCI formed a *prima facie* opinion that CHB appears to have abused its dominant position by not disclosing a timeline for delivery of possession to the allottees and levying a month's interest for a day's delay in

payment of instalments by the Informant. Consequently, the CCI ordered a DG investigation against CHB.

Subsequently, relying on the DG's investigation report, CCI held that CHB enjoys a dominant position in the relevant market for the provision of services for the development and sale of residential flats in the UT of Chandigarh. The CCI, affirming the allegations of abuse of dominance, came to two conclusions. First, the non-disclosure of the date of delivery of possession to consumers by CHB is an abuse of dominant position under Section 4(2)(a)(i) of the Act. Second, in the absence of any stipulation to the contrary in the brochure by the CHB, the levy of a month's interest for a day's delay in payment was found to be abusive conduct. Noting that CHB has already rectified its anti-competitive conduct, the CCI did not impose any monetary fine and directed CHB to desist from indulging in similar practices in the future.

12. THE NCLAT IMPOSES COST ON APPELLANT FOR FILING VEXATIOUS APPEAL AGAINST THE CCI ORDER

An appeal was filed under Section 53B of the Act by Manish Sharma (Appellant) challenging the order passed by the CCI dated 31.12.2021 (**Impugned Order**) before the National Company Law Appellate Tribunal (NCLAT). The Appellant alleged that the State of Chhattisgarh abused its dominant position by awarding a tender for



the supply and installation of Medical Oxygen Gas Pipeline System and Modular/ Non-Modular Operation Theatres in several Government hospitals in the state to Mediglobe Medical System Ltd. without scrutinizing the qualifications vis-à-vis the tender requirements. It was further alleged that an investigation is already pending against the Government officials involved in the process of awarding of tender which fact was not taken into consideration by the CCI while passing the Impugned Order. While dismissing the Information filed by the Appellant, the CCI held that the submission of a bid by an ineligible bidder cannot be said to be an abuse of dominant position on the part of that bidder.

Furthermore, no contravention has been made out under Section 3 of the Act as there are no agreement between the parties, which is a mandatory prerequisite under Section 3 of the Act. The NCLAT vide order dated 07.08.2023 held that the Appellant has filed a vexatious and an unnecessary appeal to keep the issue against the respondents alive without being able to make any case for violations under the Act. Consequently, the NCLAT upheld the Impugned Order and imposed a cost of INR 50,000 on the Appellant.

13. THE NCLAT UPHELD THE CCI'S ORDER DISMISSING ALLEGATIONS PERTAINING TO SECTION 3 AND 4 OF THE ACT BY PVR LIMITED AND INOX LEISURE LIMITED

The Consumer Unity & Trust Society (CUTS/ Appellant) had filed an Information under Section 19(1)(a) of the Act before the CCI against PVR Limited (PVR) and INOX Leisure Limited (INOX) for the alleged contravention of Section 3(1) of the Act. Therein, it was contended that both PVR and INOX had entered into an anti-competitive agreement likely to have an AAEC in the relevant market for the exhibition of films in multiplex theaters and high-end screen theaters in India based on the information that PVR and INOX are likely to merged as a combined entity. It was further contended that the combined entity after merger would be the largest market player in the film exhibition industry in India, and hence will have an AAEC in the relevant market.

The CCI observed that even for attracting Section 3(1) of the Act, the agreement should be of the nature which may result in an AAEC or likelihood thereof, but no case can be made out merely on the apprehension that the agreement may give rise to a conduct in the future which would thereafter cause AAEC. Moreover, the CCI held that dominance per se is not anti-competitive under Section 4 of the Act, but some abusive conduct is necessary. Consequently, the CCI dismissed



the Information for the absence of a *prima facie* case at this stage. Notably, during the pendency of appeal before the NCLAT, the said merger had already taken place and was approved by the NCLT vide order dated 12.01.2023. The merger was exempted from notification requirements under Section 5 of the Act as it qualified for the de minimis exemption.

The NCLAT observed that the combination of PVR and INOX is governed by Section 5 read with Section 6 of the Act and has nothing to do with Section 3(1) of the Act. Hence, it was held that the Appellant's Information was not in accordance with the law for initiating action under Section 19(1)(a) of the Act. Assailing the CCI's order, the Appellant argued that the CCI failed to appreciate the usage of the phrase "likely" in Section 3(1) of the Act conveys a sense of probability as distinguished from a mere possibility. The NCLAT further held that this contention was of no consequence as violation of Section 3(1) of the Act is not made out because this was not a case of anti-competitive agreement but merger falling within the definition of combination. Lastly, the NCLAT, dismissing the Appeal, upheld CCI's order that dominance alone is not enough, and it is only the conduct which falls within the ambit of Section 4 of the Act.

GUN JUMPING

14. THE CCI PENALISES BHARTI AIRTEL FOR FAILING TO NOTIFY ITS ACQUISITION OF 20% SHAREHOLDING IN BHARTI TELEMEDIA LIMITED

The proceedings pertained to the acquisition of 20% shareholding of Bharti Telemedia Limited (BTL) by Bharti Airtel Limited (BAL) from Lion Meadow Investment Limited (LMIL) [Step 1] and the subsequent acquisition of 0.664% shareholding in BAL by LMIL [Step 2]. As the aforementioned transaction was not notified to CCI for its approval, it issued letters to the parties seeking details of the transaction. Based on the response to the letter, the CCI came to a prima facie conclusion that the parties had contravened Section 6(2) and (2A) of the Act by not notifying the combination. Hence, the CCI initiated Section 43A proceedings against BAL and LMIL and issued a Show Cause Notice (SCN).

In response, it was contended that the said transaction benefits from Item 2 of Schedule I of the Combination Regulation, which exempts combinations where the acquirer has more than 50% shares prior to the transaction except when the transaction results in a transfer from joint control to solo control. It was contended that BAL was in the sole control of BTL before and after the said transaction. Furthermore, it was argued that LMIL's investment in BTL was purely a financial investment. The rights available with LMIL were investor protection



rights, conferring neither material influence nor joint control. In relation to Step 2, it was argued that the benefit of minority acquisition exemption (Item 1, Schedule I of the Combination Regulations) would be applied as the acquisition would be presumed to be a financial investment (less than 10%).

The core issue framed by CCI was whether the transaction resulted in a transfer from joint control to sole control of BTL. The CCI observed that joint control exists when two or more persons have the ability to exercise material influence over another enterprise. A constraining presence on the decision-making process or affairs of the management of an enterprise by a person suffices control. Therefore, rights available to LMIL prior to the transaction such as limited voting rights, representation on the board, veto rights, quorum rights, and consultation rights amounted to joint control. Therefore, the CCI held that benefit under Item 2 was not available in relation to Step 1 of the transaction. Furthermore, it held that Step 2 was part consideration for Step 1 of the transaction, and hence the interconnected transactions were required to be jointly notified as per Regulation 9(4) of the Combination Regulations. Consequently, a penalty of INR 1 Crore was imposed on BAL.

15. THE CCI LEVIED A PENALTY ON AXIS BANK LIMITED FOR JUMPING THE GUN IN RELATION TO ACQUISITION OF 9.91% STAKE IN CSC E-GOVERNANCE SERVICES INDIA LIMITED

The CCI imposed a penalty of INR 40 lakhs on Axis Bank Limited (**Axis Bank**) for failure to notify the CCI regarding the acquisition of 9.91% stake in CSC e-Governance Services India Limited (**CSC e-Governance**). The acquisition took place in November 2020 without giving any notice to the CCI seeking its approval.

Axis Bank contended that its failure to notify the combination was a result of a bona fide error in assessing the applicability of the *de minimis exemption* basis the financials on financial year ending March 2019 (wherein the turnover was INR 919.77 crores) instead of that of year ending March 2020 (wherein the turnover was INR 1095.78 crores). On this, the CCI noted that the combined assets and turnover of the parties exceeded the jurisdictional threshold and the *de minimis exemption* was not applicable.

Axis Bank also contended that the said combination was eligible for exemption benefits as per the explanation to Item 1 of Schedule I to the Combination Regulation. The CCI noted that one of the conditions to avail the benefit of the explanation is that the acquirer entity is not a member of the board of directors of the enterprise whose shares or voting rights are being acquired; does not have a right or



intention to nominate a director on the board of directors of the enterprise whose shares or voting rights are being acquired; and does not intend to participate in the affairs or management of the enterprise whose shares or voting rights are being acquired.

Basis the Share Subscription Agreement between the parties, the CCI noted that the investment was strategic in nature by way of which Axis Bank had the intention to have representation on the board of CSC e-Governance and participate in the management or affairs. Therefore, the CCI noted that the Item 1 of Schedule I would not be applicable since the acquisition is not made in the ordinary course of business or solely as an investment. Accordingly, the CCI imposed a penalty of INR 40 Lakhs on Axis Bank for gun-jumping.

16. THE CCI PENALISED NTPC FOR ITS FAILURE TO NOTIFY ACQUISITION OF ADDITIONAL 35.47% SHAREHOLDING IN RATNAGIRI GAS & POWER PRIVATE LIMITED

The CCI penalised National Thermal Power Corporation Ltd. (NTPC) for gun jumping in relation to the acquisition of 35.47% shareholding of Ratnagiri Gas & Power Private Limited (RGPPL), thereby increasing NTPC's shareholding in RGPPL from 25.51% to 60.98%.

NTPC contended that the purpose of the transaction was not to acquire control over RGPPL but to settle the latter's debt to revive an

asset of national importance. Additionally, it was submitted that notwithstanding the increase in shareholding, NTPC's rights in RGPPL remained the same before and after the transaction. Lastly, as per the Oil and Gas Exemption notified by the government (Government of India Notification No. S.O. 3714(E) dated 22.11.2017), all combinations involving Central Public Sector Enterprises operating in the Oil and Gas Sectors are exempted from notifying a combination to the CCI. As RGPPL is jointly controlled by the Gas Authority of India Limited (GAIL), the benefit of the exemption could be extended to the concerned transaction.

The CCI held that the acquisition of shares by NTPC was notifiable since the shareholding of NTPC in RGPPL increased from 25.51% to 60.98%. The CCI noted that the transaction would not benefit from the exemption provided under Items 1 and 1A of Schedule I of Combination Regulations as the same only exempts transactions where the acquirer's post-transaction shareholding is less than 50%. The CCI noted that the mandatory regime for notifying a proposed combination is applicable, irrespective of whether the combination causes any AAEC in India or not. Accordingly, the CCI held NTPC liable for gun jumping and imposed a penalty of INR 40 lakhs.



17. THE CCI PENALISED PLANTINUM JASMINE A 2018 TRUST AND TPG UPSWING LTD. FOR ERRONEOUSLY AVAILING THE GREEN CHANNEL ROUTE

The proceeding pertained to the acquisition of a 5% stake in UPL Sustainable Agri Solutions Limited (**UPL SAS / Target**) by Platinum Jasmine A 2018 Trust (Platinum Trust), acting through its Trustee Platinum Owl C 2018 RSC Limited (Platinum Trustee), and TPG Upswing Ltd (TPG) (collectively referred as “Acquirers”) under the Green Channel route.

However, it was found that Upswing Trust, a jointly owned subsidiary of TPG Inc, holds a 22.2% stake in UPL Corporation Ltd (**UPLC**). Furthermore, Arysta Lifescience India Limited (**Arysta**) is a subsidiary of UPLC and is engaged in the business of manufacturing and distribution of formulated crop production products (**FCPP**). Target was also found to be engaged in the business of FCPP. Consequently, taking the horizontal overlap into account, the CCI initiated proceedings under Section 43A of the Act against the Acquirers and issued a Show Cause Notice (**SCN**) to the parties for erroneously availing the Green Channel approval.

In response, it was contended that Arysta and UPL SAS belong to the same corporate group and were two arms of the same group selling the same product. The products sold by Arysta India to UPL SAS are in the nature of intra-group sales,

and therefore the combination will not lead to any change in the competition landscape. Moreover, the FCPP sales to third parties are not the primary business of Arysta and is in the process of discontinuing the same.

On analysis, the CCI framed the primary issue as to whether the concerned combination is eligible for the Green Channel approval facility or not. The CCI held that contentions raised in the response such as the impact on the competition landscape, cessation of FCPP sale to third parties, and the entities belonging to the same group are irrelevant while considering the eligibility for Green Channel approval facility. If any overlap exists between the parties, the combination is not eligible for the benefit of the Green Channel approval facility. It was held that the concerned combination is not eligible for the benefit of the Green Channel. Consequently, the notice and the subsequent approval granted for the concerned combination were held to be *void ab initio*. Additionally, a total penalty of INR 55 Lakhs (INR 5 Lakhs under Section 43A and INR 50 Lakhs under Section 44) was levied on the acquirers.

18. THE CCI IMPOSED A PENALTY ON MASSACHUSETTS MUTUAL LIFE INSURANCE COMPANY FOR GUN JUMPING

The CCI imposed a penalty of INR 5 lakhs on Massachusetts Mutual Life Insurance Company (**MassMutual**) for failure to notify the CCI in relation to the acquisition of 16%

shareholding in Invesco Limited (**Invesco**).

It was contended by MassMutual that the transaction benefited from the de-minimis exemption, basis the turnover of Investco's subsidiaries in India at the time of the transaction. At the time of the transaction, Investco's main presence in India was through its subsidiary which was an asset management company, i.e., Invesco Asset Management (India) Private Limited that managed a registered mutual fund, Investco Mutual Fund.

It was submitted that the turnover generated on account of buying/selling of the securities is only held in trust for the unit holders (through Investco Mutual Fund), ought not to be considered for arriving at the turnover of Investco in India. It was further submitted that at the time of the transaction, there were no "portfolio entities" over which Invesco could be said to have "control" such that their turnover is required to be added to the "Turnover" of the Target i.e., Invesco, either through its mutual fund business or otherwise.

The CCI noted that the appropriate methodology for determination of assets would be the aggregate of (i) assets of the asset management company (**AMC**) of the mutual fund, (ii) assets of the trustee of the mutual fund, if it is also subject to the acquisition and, (iii) assets under management (**AUM**) of the mutual funds (which would

include the AUM of Investco Mutual Fund). Further the turnover would be the aggregate of (i) turnover/revenue from operations of the AMC of the mutual fund, (ii) turnover/revenue from operations of the trustee of the mutual fund, if it is also subject to the acquisition, and (iii) turnover of the mutual funds. Accordingly, any income generated from the securities held by a mutual fund company is considered as turnover, irrespective of whether holding of those securities confer control to mutual fund company or not.

The CCI noted that MassMutual has failed to account for the assets and turnover of Investco Mutual Fund in India, which exceeds the jurisdictional thresholds and incorrectly concluded that the transaction would benefit from the de minimis exemption. The CCI held MassMutual liable for gun jumping and imposed a penalty of INR 5 Lakhs.

19. THE CCI IMPOSES A PENALTY OF INR 10 LAKHS ON CUMMINS INC. FOR GUN JUMPING

The CCI imposed a penalty of INR 10 Lakhs on Cummins Inc. (**Cummins**) in relation to the acquisition of sole control of Meritor Inc. (**Meritor**). The proposed combination was a reverse triangular merger which was consummated in August 2022. The CCI was notified after the consummation of the transaction, in November 2022, which was subsequently approved in March 2023.



It was submitted by Cummins that prior to the consummation of the transaction, they did not have access to Meritor's confidential information. It was submitted that on the basis an inadvertent error at Meritor's behest led to an incorrect determination that the transaction benefitted from the de minimis exemption, in terms of turnover of Meritor. Subsequently, after obtaining access to the detailed financial information, the revised information reflected that India's financial information was inadvertently assigned to some other country.

Accordingly, the CCI took into account the mitigating factors such as voluntarily and promptly notifying the CCI and cooperation in the proceedings and imposed a penalty of INR 10 lakhs.

COMBINATION ORDERS

20. THE CCI APPROVED KOTAK SPECIAL SITUATION FUND'S ACQUISITION OF SHARES OF BIOCON BIOLOGICS LIMITED

The CCI vide its order dated 10.08.2023 approved Kotak Special Situation Fund's acquisition of certain equity shares of Biocon Biologics Limited (BBL) under the green channel route. BBL is engaged in the manufacture and commercialization of pharmaceutical formulations, Kotak Special Situation Fund is a sector-agnostic Alternate Investment Fund.

21. THE CCI APPROVED ACQUISITION OF TOSHIBA CORPORATION BY TBJH, INC. UNDER THE GREEN CHANNEL ROUTE

The CCI vide its order dated 01.08.2023 approved TBJH, Inc.'s (TBJH) acquisition of 100% shareholding of Toshiba Corporation (Toshiba). Toshiba operates businesses worldwide in seven domains, namely – Energy Systems & Solutions; Infrastructure Systems & Solutions; Building Solutions; Retail and Printing Solutions; Electronic Devices and Storage Solutions; Digital Solutions; and Others (including battery and other products). TBJH is a Special Purpose Vehicle (SPV) incorporated as a fully own subsidiary of Japan Industrial Partners with the objective of maximizing the investment value of the target through business expansion. The CCI, finding no horizontal, vertical, or complementary overlaps in any of the plausible relevant markets in India, approved the combination under the green channel route.

22. THE CCI APPROVED THE MERGER OF TATA CLEANTECH CAPITAL LIMITED AND TATA CAPITAL FINANCIAL SERVICES LIMITED WITH AND INTO TATA CAPITAL LIMITED

The CCI by way of its order dated 08.08.2023 approved the merger of Tata Cleantech Capital Limited (TCCL) and Tata Capital Financial Services Limited (TCFSL) with and into Tata Capital Limited (TCL). Additionally, as a result of the merger, International Finance

Corporation, an existing shareholder of TCCL will acquire 2% shareholding of TCL. TCL is registered as a Systemically Important Non-Deposit Accepting Core Investment Company. TCCL and TCFSL are subsidiaries of TCL. While TCCL is an Infrastructure Finance Company, TCFSL is Non-Deposit Accepting Non-Banking Financial Company.

23. THE CCI APPROVED THE ACQUISITION OF HDFC CREDILA BY KOPVOORN B.V., MOSS INVESTMENTS LIMITED, INFINITY PARTNERS, AND DEFATI INVESTMENTS HOLDING B.V.

The CCI by way of its order dated 08.08.2023 approved the acquisition of 90% shareholding of HDFC Credila Financial Services Limited (**HDFC Credila**) by Kopvoorn B.V., Moss Investments Limited (**Moss**), Infinity Partners (**Infinity**), and Defati Investments Holding B.V. HDFC Credila is a public limited company registered with the RBI as a Systematically Important Non-Deposit Accepting Non-Banking Financial Company. Kopvoorn B.V. is a newly incorporated holding company with no business presence in India created especially for the said acquisition. Moss and Infinity are a part of the ChrysCapital Group, which invests in a diverse range of sectors such as business services,

consumer goods and services (including ancillary services), financial services, healthcare and pharmaceuticals etc.

24. THE CCI APPROVED ACQUISITION OF 30% SHAREHOLDING OF IBS SOFTWARE BY PELIPPER HOLDCO SARL

The CCI vide its order dated 16.08.2023 approved the acquisition of 30% shareholding of IBS Software Pte. Ltd (**IBS**) by Pelipper HoldCo SARL (**Pelipper**). IBS is engaged in the business of providing software solutions to travel industry. Pelipper is a special purpose vehicle incorporated solely for the purpose of the said acquisition and is wholly owned by investment funds advised by Apex Partners LLP (**AP**).

The CCI noted that IBS and AP exhibited horizontal overlaps at the broad level in the market for IT and IT enabled services at the broad level and at a narrower level in the segments for (i) consulting services; (ii) application implementation and managed services and (iii) enterprise application software services in India. However, the CCI held that the combined market share of the parties is insignificant [0-5%] in the market dominated by giants such as Microsoft, TCS, Amazon, Oracle etc.

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