



JSA Newsletter **Competition Law**



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Supreme Court

Supreme Court sets aside judgment passed by the Gauhati High Court upholding CCI's investigation

The Supreme Court (“**SC**”) set aside a **judgment** passed by the Gauhati High Court (“**GHC**”) that quashed the *prima facie* order passed by the Competition Commission of India (“**CCI**”) and the Director General’s (“**DG**”) report in relation to alleged bid-rigging in the tender for appointment of selling agents and distributors for lotteries by the State of Mizoram, thereby contravening Section 3(3) of the Competition Act, 2002 (“**Competition Act**”).

Brief Background

In December 2011, the State of Mizoram (as an administrator of State lotteries) invited bids for the appointment of selling agents and distributors for lotteries. One bidder complained to the CCI alleging that: (i) the bidders had engaged in bid-rigging by quoting identical prices; and (ii) the State of Mizoram abused its dominant position by requiring lottery distributors to furnish exorbitant sums of money towards security.

In February 2013, the CCI ordered an investigation against bidders and noted that the State of Mizoram was not an ‘enterprise’ as per Section 2(h) of the Competition Act, as its role was limited to monitoring the business of lotteries within the State. Accordingly, an investigation cannot be ordered against it.

The DG in its investigation report (“**DG Report**”) found some bidders engaged in bid-rigging, in violation of Section 3(3) of the Competition Act. Further, while there was no order passed against the State of Mizoram, the DG Report recorded that the State of Mizoram should have been more careful in preventing unfair trade practices and their lapses raised suspicions of favouritism and collusion. The DG Report was submitted to the CCI which in-turn directed the parties to provide their response.

Aggrieved by the DG Report, the State of Mizoram and few bidders filed writ petitions before the GHC challenging the jurisdiction of the CCI to initiate an investigation as lotteries could not be considered *trade and commerce* within the meaning of Articles 301 to 303 of the Constitution of India and hence, cannot fall within the purview of the Competition Act.

GHC Observations

In August 2014, the GHC quashed the CCI’s investigation and DG Report and further noted that the CCI has no jurisdiction in the case as: (i) lotteries are not ‘trade and commerce under the Constitution of India (ii) the lottery activity being akin to gambling activity came under the purview of the doctrine of *res extra commercium*; (iii) the rights covered by a lottery ticket is nothing but an actionable claim; (iv) the Competition Act applies only to legitimate trade and goods and since lotteries are *res extra commercium*¹, they could not be covered by the Competition Act (“**GHC Order**”).

SC Observations

Aggrieved by the GHC Order, the CCI filed an appeal before the SC. The SC allowed the appeal and noted that: (i) the CCI was correct in investigating the lottery business as it was merely examining the alleged bid-rigging in the tenders which it is authorised to do under the Competition Act; (ii) lotteries may be a regulated commodity and may even be *res extra commercium*, however, if in the tendering process, there’s an anti-competitive element (such as bid-ridding), it would attract the jurisdiction of the CCI; and (iii) the GHC intervention was premature, bringing the proceedings before the CCI to a standstill, hence liable to be set aside.

(Source: SC Order dated January 19, 2022)

Supreme Court upholds CCI’s jurisdiction to investigate tyre cartel

The SC upheld the order passed by the two-judge bench of Madras High Court (“**MHC**”), wherein it dismissed a writ appeal filed by MRF Limited (“**MRF**”), challenging the order passed by the single judge of the MHC, which upheld the investigation ordered by the CCI against MRF, Apollo Tyres Limited, CEAT Limited, JK Tyre and Industries Limited and Birla Tyres Limited (collectively referred to as the “**Tyre Manufacturers**”), for indulging in alleged cartelisation under Section 3(3) of the Competition Act.

Brief Background

All India Tyre Dealers’ Federation (“**AITDF**”) made a representation to the Ministry of Corporate Affairs (“**MCA**”), Government of India alleging that the Tyre Manufacturers *inter-alia* indulged in cartelization by increasing the price of the tyre in a concerted manner. The MCA forwarded the representation to the CCI, which *vide* order dated June 24, 2016, directed the DG to investigate the conduct of the Tyre Manufacturers (“**CCI Order**”). Aggrieved by the CCI Order, MRF filed a writ

¹ It states that certain things may not be the object of private rights and are therefore unsusceptible to being traded.

petition before the MHC challenging the CCI Order, which was dismissed by the single judge *vide* order dated [March 06, 2018](#) (“**Impugned Order**”).

Aggrieved by the Impugned Order, MRF filed a writ appeal before the MHC on the grounds that the representation: (i) was not valid as it did not meet the mandatory requirements of a ‘reference’ under the Competition Act as it did not contain any incriminating evidence against the Tyre Manufacturers amongst other reasons; (ii) in the absence of a valid reference, the CCI Order is without any legal sanctity; and (iii) the issues raised in the present matter are barred by the principle of *res judicata* as the CCI, in the past has already adjudicated similar issues involving the Tyre Manufacturers and dismissed the case *vide* its order dated [October 30, 2012](#).

MHC Observations

The MHC dismissed the writ appeal and held as follows:

1. the reference cannot be invalidated merely on the grounds of failure to comply with the procedure laid down under the Competition Act unless such procedural lapse results in miscarriage of justice and affects the merits of the case. The same has not happened in the present matter;
2. the CCI Order should not be interfered with under the writ jurisdiction as the same is only an administrative order, which does not affect the rights of parties at this stage; and
3. the present matter is not barred by the principle of *res judicata* because the allegations against the Tyre Manufacturers in the present matter pertain to a different time period and therefore, the CCI has the right to entertain the present matter.

Aggrieved by the MHC Order, CEAT Limited approached the SC, which in turn upheld the MHC Order (“**SC Order**”). Subsequent to the SC Order, on February 02, 2022, the CCI passed an order imposing a collective penalty of INR 1,788 crore (USD 241 million) on the tyre manufacturers and their association for indulging in cartelization by acting in concert to increase the prices of cross ply /bias tyres variants sold by each of them in the replacement market.

(Source: MHC Order dated January 06, 2022 and SC Order dated January 28, 2022)

National Company Law Appellate Tribunal

NCLAT dismisses appeal against Ola for alleged abuse of dominant position

The National Company Law Appellate Tribunal (“**NCLAT**”) dismissed the appeals filed against ANI Technologies Private Limited (“**Ola**”)² by Meru Travels Solutions Private Limited (“**Meru**”)³ and Fast Track Call Cab Private Limited (“**Fast Track**”)⁴ (collectively referred to as the “**Appellants**”) *inter- alia* alleging abuse of dominant position under Section 4 of the Competition Act.

Brief Background

The CCI received two separate complaints from the Appellants against Ola alleging that Ola abused its dominant position by indulging in predatory pricing by offering heavy discounts to the passengers and incentives to the cab drivers, due to the large funding received by them from various investors. The CCI *vide* order dated [April 24, 2015](#), directed the DG to investigate the alleged conduct of Ola who concluded that since Ola was not dominant in the ‘*market for services of radio taxi in Bengaluru*’ (“**Relevant Market**”) and therefore, it has not abused its dominant position in the said market. On [July 19, 2017](#), the CCI passed an order whereby it agreed with the findings of the DG and dismissed the case.

NCLAT Observations

The NCLAT dismissed the appeals and held as follows:

1. Ola was facing competition from Meru, Fast Track, and Uber in the Relevant Market and was not in a dominant position;
2. Below cost pricing by Ola was not predatory with a view to oust a competitor but to establish itself and its brand in the market. The increase in market share of Ola in the Relevant Market was due to several factors such as ease of booking, visible branding, riders’ security, benefits to drivers, etc. combined with the below-cost pricing strategy;

² It is engaged in the business of providing radio taxi services, under the brand name ‘OLA’.

³ It is engaged in the business of providing radio taxi services under the brand names ‘Meru’, ‘Meru Genie’ and ‘Meru Flexi’ in many major cities across India.

⁴ It is engaged in the business of providing radio taxi services, under the brand name ‘Fast Track’, in the southern part of India.

3. Uber, which entered the market of radio taxi in Bengaluru from mid-2013 onwards also adopted an almost similar below-cost pricing strategy. Thus, Ola's below costing model was in response to its close competitor Uber's strategy. Thus, Ola could not operate independent of Uber in the Relevant Market.

(Source: [NCLAT Order dated January 7, 2021](#))

Enforcement

CCI finds maritime transport companies guilty of indulging in cartelisation

The CCI found Nippon Yusen Kabushiki Kaisha ("**Nippon**"), Kawasaki Kisen Kaisha Limited ("**Kawasaki**"), Mitsui O.S.K. Lines Limited ("**Mitsui**"), and Nissan Motor Car Carrier Company ("**Nissan**"), including their office bearers (collectively referred to as "**Maritime Transport Companies**"), guilty of indulging in cartelisation in providing maritime transport services to original equipment manufacturers ("**OEMs**") for various routes, in contravention of Section 3(3) of the Competition Act.

The case was initiated pursuant to a leniency application filed by Nippon disclosing the existence of a cartel. Basis this, the CCI passed an order wherein it directed the DG to investigate the alleged conduct. During the pendency of the investigation, Mitsui and Nissan also filed a joint leniency application arguing that they belong to the same group and should be considered a 'single economic entity for the purposes of the Competition Act. However, the CCI rejected the joint leniency application and noted that the scheme of Competition Act does not allow parties to file a joint leniency application. Subsequently, Mitsui and Nissan filed separate leniency applications with the CCI.

The DG *inter-alia* concluded that Maritime Transport Companies exchanged commercially sensitive information ("**CSI**") and followed a 'Respect Rule' wherein the Maritime Transport Companies would avoid competition with each other and protect the business of the incumbent transport company with the respective OEM, in violation of Section 3(3) of the Competition Act.

Kawasaki challenged the maintainability of the case on the grounds that: (i) the alleged collusion amongst the Maritime Transport Companies is outbound in nature as they are only exporting vehicles and India was neither the origin nor destination for the vehicles and the vehicles merely passed through India. Therefore, if at all any adverse effect on competition would have taken place, it would be within the territorial jurisdiction of other countries and not India; and (ii) Section 3(5) of the Competition Act provides an exemption to exporters of goods.

The CCI rejected this contention and noted that Maritime Transport Companies are not exporters as they are providing maritime transport services to OEMs who are the actual exporters. Additionally, given the above, they cannot claim an exemption under Section 3(5) of the Competition Act.

Further, Kawasaki, by relying on the *Flashlight Cartel* case⁵ contended that mere exchange of CSI without implementation does not constitute a cartel. However, the CCI noted that in a recent decision⁶, the CCI held that mere exchange of CSI, even without the implementation of an agreement is sufficient to establish the existence of a cartel if that agreement is even likely to cause an appreciable adverse effect on competition (AAEC) in India. Further, the facts of the *Flashlight Cartel* case are very different from the instant case.

The CCI noted that the Maritime Transport Companies: (i) had an express agreement for enforcing the 'Respect Rule' wherein they would avoid competition with each other and protect the business of the incumbent transport company with the respective OEM by either quoting higher bid than the incumbent or by refraining to quote; (ii) shared CSI (which includes freight rates) with each other *via* several multi-lateral/ bi-lateral contracts/discussion/meeting/e-mails.

Accordingly, the CCI directed the Maritime Transport Companies and their office bearers to cease and desist from engaging in anti-competitive conduct. The CCI granted 100 per cent immunity to Nippon and its office bearers. Further, the CCI imposed a penalty of approx.: (i) INR. 10.13 crore (USD 1.36 million) on Mitsui after granting 50 per cent reduction in penalty; (ii) INR 28.67 crore (USD 3.85 million) on Nissan after granting 30 per cent reduction in penalty; and (iii) INR 24.24 crore (USD 3.26 million) on Kawasaki for indulging in cartelisation.

(Source: [CCI order dated January 20, 2022](#))

⁵ Suo Motu Case No. 01 of 2017 titled In Re: Alleged Cartelization in Flashlights Market in India decided on November 06, 2018.

⁶ Suo Motu Case No. 06 of 2017 titled In Re: Alleged anti-competitive conduct in the Beer Market in India decided on September 24, 2021.

CCI finds NECC guilty of indulging in anti-competitive practices

The CCI found the National Egg Co-ordination Committee (“NECC”), an association of poultry farmers, including their office bearers guilty of indulging in anti-competitive activities by fixing and declaring the daily prices of eggs in various states of India from January 2009 till 2020, in contravention of Section 3(3) of the Competition Act.

In January 2018, the CCI directed the DG to investigate the alleged conduct pursuant to complaints⁷, alleging involvement in anti-competitive activities by NECC. The DG *inter-alia* concluded that: (i) egg prices were not determined basis the prevailing market forces, rather they were determined by NECC’s central executive committee and declared on a regular basis through coordination amongst different zonal chairmen by weekly teleconference calls; (ii) NECC monitored the implementation of NECC declared prices by farmers and poultry stores and the farmers in each zone were informed not to sell eggs below the NECC declared prices and were liable to a penalty in case of non-adherence; and (iii) the Chairperson of NECC did not co-operate with the investigation.

The CCI agreed with the DG’s findings and noted that: (i) the central executive committee played an active role in deciding the price of eggs and NECC, through weekly conferences, exchanged information about the price of other zones, stock level, movement of stock, etc.; and (ii) absence of evidence regarding the imposition of sanction on farmers for non-adherence to the declared price is not enough in concluding that the prices were not implemented in spirit.

The CCI imposed a penalty of INR 15 lakhs (USD 20,132) on the Chairperson of NECC under Section 43 of the Competition Act for not co-operating with the investigation carried out by the DG even after giving multiple opportunities. Although, the CCI did not impose any monetary penalty but directed NECC to: (i) give sufficient disclaimers, while declaring egg prices, that the prices so declared are only indicative in nature; (ii) cease and desist from issuing any directives/ threats in case of non-adherence to the declared price; and (iii) foster a culture of competition compliance within its organisation.

(Source: CCI Order dated January 14, 2021)

CCI orders investigation against Chandigarh Housing Board for indulging in the alleged abuse of dominant position

The CCI received a complaint against Chandigarh Housing Board (“CHB”) for indulging in the alleged abuse of dominant position by imposing unfair, exploitative, and arbitrary clauses on the allottees who purchased flats under the housing scheme of CHB in Chandigarh, under Section 4 of the Competition Act.

The complainant *inter- alia* alleged that CHB: (i) arbitrarily charged high-interest rate towards payment of installments even during the construction period; (ii) purposefully did not disclose the date of possession, to avoid any liability in case of delay in allotment of flats; and (iii) imposed high penal interest in case of delayed payment by allottees and there was no provision to pay corresponding interest to allottees for the delay on the part of CHB in allotment of flats (hereinafter referred to as the ‘**Alleged Conduct**’).

The CCI defined the relevant market as ‘*market for the provision of services for development and sale of residential flats in the Union Territory of Chandigarh*’ since residential property cannot be substituted with commercial property and noted that the CHB is dominant in the relevant market as it appears to enjoy a statutory monopoly in the provision of housing facility to the persons who desire to own a residential flat in Chandigarh. The CCI also noted that CHB received more than 5000 applications against 160 flats in response to the scheme that was opened in 2010, which is a testament of its dominance in the relevant market.

In relation to the Alleged Conduct, the CCI noted that CHB appears to have abused its dominant position by imposing unfair, exploitative, and arbitrary clauses on allottees. Accordingly, the CCI directed the DG to investigate the alleged conduct of CHB.

(Source: Order dated January 13, 2022)

CCI orders another investigation against Google for indulging in the alleged abuse of dominant position

The CCI received a complaint from the Digital News Publishers Association against Alphabet Inc., Google LLC, Google India Private Limited and Google Ireland Limited (collectively referred to as “**Google**”) for imposing unfair conditions on online news websites, under Section 4 of the Competition Act.

Majority of the traffic on online news websites comes from search engines like Google and therefore, online news websites are dependent on Google, being the leading search engine contributing to approximately 50 per cent of the user traffic.

⁷ From Mr. T.R. Chandran in Case 09/2017, and People For Animals, in Case 36/2017.

Google, by way of an algorithm, determines which online news website is discovered *via* its search. Google displays news content: (i) on its search page; and (ii) through its news aggregator vertical, i.e., Google News. Further, Google has a strong position in the digital advertising space. Online news websites generate two-third of their revenue from digital advertising. The online advertisers, who place their advertisements on the online news websites, negotiate terms and revenue with Google and Google gives a share of the revenue it generates from the online advertisers to online news websites.

The complainant *inter- alia* alleged that: (i) Google denied the online news websites a fair share of the revenue it generated from digital advertising on the online news websites; and (ii) Google did not disclose to the online news websites the terms of the arrangement it had with the online advertisers and the revenue that it would generate from the online advertisers.

The CCI defined the relevant markets as: (i) '*the market for online general web search services*' since online general web search services cannot be substituted with direct search option by typing the URL of websites in internet browsers, and accordingly, search engines become the first port of call for a user looking for information online; and (ii) '*market for online search advertising services*' since online and offline advertising services are not comparable, and the characteristics, intended use and price of search and non-search advertising are different from one another (collectively referred to as the "**Relevant Markets**").

The CCI noted that Google is dominant in the Relevant Markets as: (i) Google's search engine results are a prominent source of online traffic to online news websites which generate significant user traffic, resulting in increased discoverability for online news websites; and (ii) selling of advertising space on the online news websites primarily relies on traffic generated by Google. The CCI also noted that Google is the largest provider of ad-tech services globally.

In relation to abuse, the CCI *inter- alia* noted that Google appears to have abused its dominant position by imposing unfair conditions on online news websites by: (i) not disclosing the terms of its arrangement with the online advertisers to the online news websites, thereby preventing the online news websites from earning more revenue; and (ii) keeping a large portion of the revenue generated from the online advertisers. Accordingly, the CCI directed the DG to investigate the alleged conduct of Google.

(Source: CCI Order dated January 07, 2021)

CCI orders investigation against IREL for indulging in the alleged abuse of dominant position

The CCI received a complaint against IREL (India) Limited ("**IREL**")⁸ for indulging in alleged abuse of dominant position by imposing unfair conditions/restrictions in the supply of the mineral i.e., Sillimanite⁹ to domestic micro, small and medium enterprises ("**MSMEs**"), under Section 4 of the Competition Act.

The complainant *inter- alia* alleged that IREL: (i) increased the price of Sillimanite exponentially from INR 9000 per metric tonne in 2016-17 to INR 14000 per metric tonne in 2020-2021, without giving any objective justification; (ii) engaged in discriminatory pricing wherein, it sold Sillimanite to MSMEs at a higher rate compared to the rate being offered to multinational companies ("**MNCs**") and (iii) arbitrarily fixed the supply quantity of Sillimanite, thereby forcing its customers to accept the quantity as decided by IREL (hereinafter referred to as the "**Alleged Conduct**").

IREL challenged the maintainability of the case on the ground that the CCI does not have jurisdiction as it is not an 'enterprise' under the Competition Act and contended that the activities undertaken by IREL are sovereign in nature as beach sand minerals produced by it have potential applications in different stages of Indian Nuclear Power Programme. The CCI rejected the contention and noted that IREL is an enterprise as it is engaged in mining and selling of Sillimanite for consideration to its customers in India and abroad and the said activity is commercial in nature.

On merits, the CCI defined the relevant market as '*mining and supply of beach sand Sillimanite in India*' since underground mined Sillimanite cannot be substituted with beach sand Sillimanite. The CCI noted that IREL is dominant in the relevant market as it has the exclusive right to undertake mining and supply of beach sand minerals in India. Further, the CCI noted that IREL appears to have abused its dominant position by indulging in the Alleged Conduct. Accordingly, the CCI directed the DG to investigate the alleged conduct of IREL.

(Source: Order dated January 03, 2022)

Merger Control

CCI approves a combination between Delhivery and FedEx India

⁸ IREL is a Government of India undertaking, engaged in the business of mining and production of minerals like Ilmenite, Rutile, Zircon, Girnet and Sillimanite.

⁹ Sillimanite is a natural sand-based product generated during the extraction of rare earth compounds from beach sand. It is used in production of refractories that is used in metal and alloy making industry as well as in ceramic and foundry industry.

The CCI approved the acquisition of: (i) 2.9 per cent of Delhivery Limited (**Delhivery**)¹⁰ by FedEx Express Transportation and Supply Chain Services (India) Private Limited (**Fedex India**)¹¹; and (ii) acquisition of operating assets of Fedex India and TNT India Private Limited ("**TNT**")¹² by Delhivery (hereinafter referred to as the "**Proposed Transaction**").

Fedex India and Delhivery will also enter into a service agreement whereby: (i) Delhivery will act as FedEx India's sales agent for the sale of FedEx's international express logistics services; and (ii) FedEx India will provide international express logistics services into and out of India ("**Service Agreement**").

The CCI noted that there are horizontal overlaps between the activities of the parties in the overall market of logistics services in India ("**Broad Market**"). Within the Broad Market, the activities of the parties overlap in the market for: (i) express services in India; (ii) freight services in India; (iii) warehousing services in India; and (iv) third party logistics services in India. However, given the low market shares of the parties with the presence of several significant players in each relevant market, the CCI noted that Proposed Transaction is not likely to raise competition concerns.

Further, the CCI noted that by virtue of the Service Agreement, there is a potential vertical link between the activities of the parties in the upstream market of international express services and the downstream market of domestic express services. However, given the insignificant presence of the parties and the presence of several players in these markets, the same is not likely to raise foreclosure concerns.

(Source: CCI Order dated November 23, 2021)

CCI approves acquisition of majority shareholding of Suez S.A. by Veolia Environment S.A. and others

The CCI approved the: (i) acquisition of 50 per cent equity share capital of Suez S.A. ("**Suez**")¹³ by Veolia Environment S.A. ("**Veolia**")¹⁴; (ii) merger of Veolia and Suez; (iii) creation of New Suez¹⁵ by Suez and Veolia; (iv) acquisition of equity share capital of New Suez by a consortium of investors namely, Meridiam¹⁶, Global Infrastructure Management LLC ("**GIP**"), Caisse des depots et consignations ("**CDC**") and CNP Assurances ("**CNP**")¹⁷ (collectively referred to as the "**Consortium**"); and (iv) acquisition of the water technology solutions business ("**WTS**") of Suez by Veolia ("**Suez Target Business**") (collectively referred to as the "**Proposed Transaction**").

Post the Proposed Transaction, New Suez will house: (i) all municipal water activities of Suez, in India, including drinking water management and wastewater management; and (ii) waste management business of Suez in India ("**New Suez Business**").

The CCI noted that there are no horizontal, vertical, or complementary overlaps between the activities of: (i) Veolia and Suez (including the Suez Target Business); and (ii) New Suez and each Consortium member including their portfolio companies in India. With respect to CDC, the CCI noted that CDC (including its subsidiary CNP) has common shareholding and nomination rights in Veolia and New Suez¹⁸, however, there will be no exchange of CSI because of many internal rules and safeguards in this regard placed by the parties. Accordingly, the CCI noted that the Transaction is not likely to raise foreclosure concerns.

(Source: CCI Order dated November 21, 2021)

¹⁰ It is a delivery and e-commerce logistics company.

¹¹ It is an indirect subsidiary of FedEx Corporation, USA (**Fedex US**). In India, Fedex India is engaged in end-to-end logistics solutions

¹² It is an indirect subsidiary of Fedex US. It provides logistics services in the form of express parcel deliveries and special services.

¹³ Headquartered in France, it provides water and waste management services to industrial and municipal clients.

¹⁴ Headquartered in France, it is present in India through its subsidiary Veolia India Private Limited. It offers a range of water solutions products. It is also engaged in water management space in India.

¹⁵ On April 12, 2021, Veolia and Suez agreed to create New Suez. It would include some activities of Suez globally, including identified activities of Suez in India.

¹⁶ Incorporated in France, it specialises in the development, financing and long-term management of infrastructure.

¹⁷ It is incorporated in France and solely controlled by CDC.

¹⁸ CDC (including its subsidiary CNP) holds certain equity share capital along with voting rights and representation on Veolia's board and will hold 18-20 per cent equity share capital in New Suez along with nomination rights on the Supervisory Committee of New Suez.

CCI imposes penalty of INR 20 lakh on Investcorp India for gun jumping

The CCI imposed a penalty of INR 20 lakh (USD 26,850) on Investcorp India Asset Managers Private Limited (“**Investcorp India**”)¹⁹ for failing to notify its acquisition of venture capital fund and alternate investment funds (“**Target Funds**”)²⁰ managed by IDFC Alternatives Limited (“**IDFC Alternatives**”)²¹ (referred to as the “**Transaction**”).

Brief Background

On February 1, 2019, Investcorp India consummated the Transaction without seeking CCI approval for the same. On December 21, 2020, the CCI issued a show cause notice to Investcorp India asking it to explain why the Transaction was not notified to it for its approval. The CCI *inter- alia* noted that:

1. **Acquisition of control over portfolio companies:** Investcorp India contended that it was merely an investment manager and did not acquire ownership over the Target Funds or control over the portfolio companies of the Target Funds which were managed by IDFC Alternatives. The CCI rejected this contention and noted that, as a result of the Transaction, Investcorp India became the investment manager of the Target Funds and acquired operational control over them. In the instant case, when Investcorp India acquired the Target Funds i.e., the fund management business, it resultantly gained control over the portfolio companies as well.
2. **Financial Thresholds:** Investcorp India contended that only the value of the assets and turnover of the Target Funds (and not the controlled portfolio companies of the Target Funds) were relevant for computing the *de minimis* and Section 5 financial thresholds. The CCI rejected the contention and held that since Investcorp India acquired operational control over the Target Funds, the value of assets and turnover of the controlled portfolio companies of the Target Funds would also need to be considered. The same breach the *de minimis* and Section 5 financial thresholds making the Transaction notifiable to the CCI.
3. **Proportionate share in the financials of the underlying portfolio companies to be considered:** Investcorp India contended that if assets and turnover of the portfolio companies are taken into consideration, they should be considered only on a proportionate basis, i.e., to the extent of shareholding and control of Investcorp India over the fund. The CCI rejected the contention and held that Section 5 financial thresholds do not operate on the basis of proportionality, i.e., if control over the fund is established, the complete financials of the fund/target would be attributed to the fund manager for the purpose of computing the financial thresholds.

Accordingly, the CCI imposed a penalty of INR 20 lakh (USD 26,850) on Investcorp India.

(Source: CCI Order dated December 17, 2021)

CCI approves acquisition of minority shareholding of IRB by Ferrovia Group under Green Channel

The CCI approved the acquisition of up to 24.90 per cent equity share capital of IRB Infrastructure Developers Limited²² by the Ferrovia group²³ through Cintra INR Investments BV²⁴ (referred to as the “**Proposed Transaction**”). The parties notified the Proposed Transaction under the Green Channel Route (“**GCR**”) as there were no horizontal, vertical, or complementary overlaps between the activities of the parties in India.

(Source: Summary)

CCI approves the appointment of a director by Alpha Wave on the board of directors of Dream 11 under Green Channel

¹⁹ It is engaged in the provision of investment management services and management, operation and supervision of the investment vehicles including but not limited to the alternate investment funds, venture capital funds, etc.

²⁰ It entails a venture capital fund and three alternate investment funds engaged in private equity and real estate investment management businesses.

²¹ It was engaged in investment management. It offered portfolio and risk management, investment banking and advisory services.

²² It is a public limited company it is engaged in carrying out construction works in accordance with engineering, procurement and construction contracts and providing operation and maintenance services for roads and highways in India.

²³ Ferrovia group is a global developer of transport infrastructure, mobility solutions, engineering and is engaged in the construction of civil works and buildings.

²⁴ It is a special purpose vehicle incorporated for the purpose of the Proposed Transaction and does not carry out any business activities directly in India or elsewhere. The Cintra business division of the Ferrovia group undertakes activities in relation to toll roads development and management.

The CCI approved the appointment of a director by Alpha Wave Ventures, LP²⁵ on the board of directors of Dream Sports Inc. (“**Dream 11**”)²⁶ and/ or its subsidiaries, pursuant to an invitation by Dream 11 (referred to as the “**Proposed Transaction**”). The parties notified the Proposed Transaction under the GCR as there were no horizontal, vertical, or complementary overlaps between the activities of the parties in India.

(Source: Summary)

CCI approves acquisition of majority shareholding of Imperial Auto by Stone Plant Investments under Green Channel

The CCI approved the acquisition of 70 per cent equity share capital of Imperial Auto Industries Limited²⁷ by Stone Plant Investments B.V. (“**SPI**”);²⁸ and SPI’s acquisition of indirect control over the management of SJ Rubber Industries Limited²⁹ (referred to as the “**Proposed Transaction**”). The parties notified the Proposed Transaction under the GCR as there were no horizontal, vertical, or complementary overlaps between the activities of the parties in India.

(Source: Summary)

CCI approves acquisition of additional shareholding of PNB MetLife by MetLife International under Green Channel

The CCI approved the acquisition of an additional 14.46 per cent of the equity share capital of PNB MetLife India Insurance Limited (“**PNB MetLife**”)³⁰ by MetLife International Holdings LLC (“**MetLife International**”)³¹ (referred to as the “**Proposed Transaction**”). Pursuant to the Proposed Transaction, the shareholding of MetLife International will increase to 46.87 per cent from 32.4 per cent. The parties notified the Proposed Transaction under the GCR as there were no horizontal, vertical, or complementary overlaps between the activities of the parties in India.

(Source: Summary)

For more details, please contact km@jsalaw.com



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²⁵ It is a diversified, global asset manager which manages and holds variety of investments across different asset classes, themes, and geographies.

²⁶ It is a sports technology platform and is primarily engaged in the business of providing online fantasy real-life sports platform, building an online sports ecosystem, and has recently diversified its offerings to cover sports technology products and services.

²⁷ It is incorporated in India. It is engaged in the business of manufacturing fluid transmission products for automobile.

²⁸ It is incorporated in Netherland. It is an investment holding company.

²⁹ It is an Indian company, engaged in the business of manufacture and sale of manufactured rubber compounds in India.

³⁰ It is engaged in the business of life insurance and offers range of life and health insurance products and services to individuals and group customers. It does not provide non- life insurance products or services in India or abroad.

³¹ It is an indirect wholly- owned subsidiary of MetLife Inc. and has shareholding in insurance companies that offer life, accident, and health insurance retirement and savings products.