

Contents

Telangana High Court

Telangana High Court stays CCI proceedings against GMR

National Company Law Appellate Tribunal

NCLAT dismisses appeal filed by Sundaram Brake against CCI Order

Competition Commission of India

Enforcement

CCI orders another investigation against Google for abusing dominant position

Merger Control

- CCI approves seven combinations in the month of March 2024; detailed approval orders to be published
- CCI published the detailed approval orders in the following cases:
 - acquisition of shareholding of Kotak Mahindra GIC by Zurich Insurance
 - acquisition of shareholding of API by Temasek, EvolutionX, Goldman Sachs, Naspers and CDPQ
 - acquisition of minority shareholding of MG Motor by JSW Group
 - acquisition of Wistron Infocom by Tata Electronics

Miscellaneous

- Government publishes draft rules in relation to the merger control regime in India
- Government publishes report of Committee on Digital Competition Law

Media Updates

- CCI issues show cause notice to Muthoot Finance for non-disclosure of material facts in the complaint
- CCI Chairperson clarifies that amended provisions will apply to pending cases before CCI
- CCI is conducting enquiries against certain FinTech Companies and Online Intermediary Service Providers

Telangana High Court

Telangana High Court stays CCI proceedings against GMR

The Telangana High Court (“**THC**”) stayed the investigation report of the Director General (“**DG**”) dated November 21, 2023 (“**DG Report**”) and further proceedings against GMR Hyderabad International Airport and GMR Aero Technic Limited (together referred to as “**GMR**”), for 2 (two) weeks i.e., until April 2, 2024.

Air Works Engineering India Private Limited (“**Complainant**”)¹, filed a complaint against GMR before the CCI *inter alia* alleging that GMR abused its dominant position by denying market access to the Complainant in the provision of line maintenance services to aircrafts at the Rajiv Gandhi International Airport and favouring its own group company that competes with the Complainant in the said market. On October 3, 2019, the CCI passed a *prima facie* [order](#) and directed the DG to investigate the matter².

Subsequently, the parties entered into a settlement agreement and the Complainant sought to withdraw its complaint from the CCI *vide* application dated October 30, 2023 (“**Withdrawal Application**”). The CCI rejected the Withdrawal Application and assumed jurisdiction to proceed with its inquiry. Thereafter, the DG submitted the DG Report to the CCI and the CCI by way of an order dated February 16, 2024, decided to proceed further in the matter (“**CCI Order**”).

GMR challenged the CCI Order and the DG Report, before the THC. The THC, while relying on the judgment of the Madras High Court in the *Tamil Nadu Film Exhibitors Association v. CCI & others*³ held that, *prima facie*, once a settlement has been reached between the parties, the very substratum of the proceedings by the CCI is lost. Hence, the CCI’s jurisdiction in the present matter needs to be examined in detail. Accordingly, the THC stayed the CCI proceedings against GMR, for 2 (two) weeks i.e., until April 2, 2024.

Subsequently, on April 2, 2024, GMR filed an interim application before the THC seeking extension of ad-interim stay on the CCI proceedings against GMR. However, there is no order passed by the THC regarding such application as yet.

(Source: THC Order dated March 19, 2024)

National Company Law Appellate Tribunal

NCLAT dismisses appeal filed by Sundaram Brake against CCI Order

The National Company Law Appellate Tribunal (“**NCLAT**”) dismissed the appeal filed by Sundaram Brake Lining Limited (“**Sundaram Brake**”), by upholding the order passed by the CCI, through which it found Sundaram Brake and other composite brake block manufacturers guilty of engaging in a bid-rigging cartel, in contravention of Section 3(3) of the Competition Act (“**Competition Act**”) (Sundaram Brake and other brake block manufacturers are collectively referred to as “**CBB Manufacturers**”).

Brief Background

On July 10, 2020, the CCI passed a final order (“**CCI Order**”) against the CBB Manufacturers for indulging in bid-rigging in relation to the supply of composite brake blocks to the Indian Railways, in contravention of Section 3(3) of the Competition Act. The CCI decided not to impose penalty on CBB Manufacturers and directed them to cease and desist from engaging in such anti-competitive practices. For a detailed summary of the CCI Order, refer to [JSA Newsletter of July 2020](#).

¹ It is an aircraft maintenance, repair and overhaul service provider.

² Air Works India (Engineering) Private Limited Vs. GMR Hyderabad International Airport Limited & Others (Case No. 30 of 2019)

³ (2015-2 L.W.686)

Proceedings before the NCLAT

Aggrieved, Sundaram Brake challenged the CCI Order before the NCLAT and *inter alia* contended that: (a) Sundaram Brake was merely a recipient of information relating to the bid prices and quantity allocation from other CBB Manufacturers (“**Information**”) and it never shared its information with other CBB Manufacturers; (b) the officials of 2 (two) CBB Manufacturers, during their deposition stated that Sundaram Brake was not part of the bid-rigging cartel; and (c) Sundaram Brake’s employee’s deposition before the DG implicating Sundaram Brake cannot be relied upon as it was given without authorisation of the company and therefore, there is not enough evidence available on record to establish contravention of Sundaram Brake.

NCLAT Observations

The NCLAT dismissed the contentions raised by Sundaram Brake and *inter alia* held that: (a) mere receipt of information by any party from its competitors would be sufficient to establish contravention of Section 3(3) of the Competition Act. In the present case, Sundaram Brake received the Information for over 5 (five) years and did not object to the same which shows meeting of the minds among cartel members; and (b) Sundaram Brake’s own employee has implicated Sundaram Brake during his deposition and e-mails exchanged amongst CBB Manufacturers, it can be clearly established that Sundram Brake was part of the bid-rigging cartel among the CBB Manufacturers.

(Source: NCLAT judgment dated April 2, 2024)

Competition Commission of India

Enforcement

CCI orders another investigation against Google for abusing dominant position

The CCI received multiple complaints⁴ against Google India Private Limited, Google Asia Pacific Pte. Ltd. and Google Ireland Limited (together referred to as “**Google**”) for indulging in alleged abuse of dominant position, under Section 4 of the Competition Act.

The complainants *inter alia* alleged that Google charges excessive service fee/commission from app developers for in-app purchases and paid applications, on the Google play store platform (“**Play Store**”).

The CCI, *prima facie*, noted that Google holds a dominant position in the markets for: (a) licensable operating system (“**OS**”) for smart mobile devices in India; and (b) app store for Android smart mobile OS in India. In relation to the conduct of Google, the CCI *inter alia* noted as follows:

1. **Imposition of unfair prices (Section 4(2)(a)(ii))**: Google charges a service fee between 10-30% in the case of Google Play billing system and 6-26% in the case of an alternate billing system. The same is 4 (four) to 5 (five) times higher than its cost of providing the services and thus, appears to be excessive and unfair. App developers have insignificant bargaining power *vis-à-vis* Google and are forced to accept terms and conditions unilaterally decided by Google, otherwise they will not be able to access a vast pool of potential Android users in India.
2. **Discrimination between Digital and Physical Delivery Apps (Section 4(2)(a)(ii))**: Google has arbitrarily made a distinction between digital delivery apps⁵ and physical delivery apps⁶. It applies service fees on digital delivery apps and not on physical delivery apps, thus, it selectively and arbitrarily imposes the service fee in a discriminatory manner.

⁴ Complaints received from People Interactive India Private Limited, Mebigoo Labs Private Limited, Indian Broadcasting and Digital Foundation and Indian Digital Media Industry Foundation.

⁵ Apps that offer digital goods and services for purchase by a user like dating apps.

⁶ Apps that offer physical goods and services for purchase by a user like food ordering.

3. **Restriction of Technical Development (Section 4(2)(b)(ii)):** Google's unfair service fee has resulted in app developers having fewer resources to develop their app thereby constraining growth of the app market.
4. **Exit of App Developers from the Market (Section 4(2)(c)):** Google's unfair service fee could: (a) force the app developers out of the market or deter them from entering the market due to increased operational cost; and (b) curtail the freedom of the app developer to choose their business model and user engagement method.

Accordingly, the CCI passed an order and directed the DG to investigate the alleged conduct of Google ("CCI Order").

During the pendency of the matter, the Complainants filed applications seeking the following interim reliefs from the CCI:

1. Google should not collect any data from app developers.
2. Google should not apply fee/commission on transactions involving in-app purchases or paid downloads (whether by Google Play billing system or alternate billing systems).
3. Google should not delist and/or hamper the visibility of the apps listed on the Play Store for non-adherence to its impugned policies by the app developers.
4. Google should allow app developers to provide the same payment options and impose no additional conditions on app developers providing digital delivery apps.

The CCI while rejecting the applications, *inter alia* noted that: (a) there must be a direct nexus between the interim relief sought and the issues under investigation. In the present case, the CCI has initiated an investigation on select issues from varied allegations of the Complainants. Thus, the relief sought must align with the issues identified by the CCI for investigation, which is not the case; and (b) the Complainants have failed to show why Google should be completely restrained from collecting its fees/commission and therefore, does not meet the necessary criteria for grant of interim relief⁷.

(Source: CCI Order dated March 15, 2024 and CCI Interim Order dated March 20, 2024)

Merger Control

CCI approves 7 (seven) combinations in the month of March 2024; detailed approval orders to be published

1. acquisition of shareholding of API jointly by MEMG Family Office LLP and 360 One Private Equity Fund;
2. acquisition of Lanco Amarkantak Power Limited by Adani Power Limited;
3. acquisition of shareholding of Shriram Investment Holdings Private Limited by Shriram Ownership Trust;
4. acquisition of grey cement business of Kesoram Industries Limited by Ultratech Cement Limited;
5. merger of Garagepreneurs Internet Private Limited with and into North-East Small Finance Bank Limited;
6. acquisition of shareholding of Asian Institute of Nephrology and Urology Private Limited by TPG Growth VSF Markets Pte. Ltd., and Waverly Pte. Ltd. (through Asia Healthcare Holdings Pte. Ltd.); and
7. acquisition of shareholding of Maini Precision Products Limited, and subsequent merger of Ring Plus Aqua Limited, MPPL, and the engineering business of JK Files & Engineering Limited, with and into a wholly owned subsidiary of Raymond Limited.

(Source: Summaries (MEMG/360 One/API, Adani Power/Lanco Amarkantak, Shriram Ownership/Shriram Investment, Kesoram/Ultratech, North-East Bank/Garagepreneurs, TPG/Waverly/AINU, RI/MPPL/RAPL/JK Files))

⁷ The necessary criteria are: (a) projection of a higher level of *prima facie* case warranting a positive direction sought at the interim stage; (b) demonstration as to how the impugned conduct would result in irreparable harm that cannot be remedied through monetary compensation; and (c) that balance of convenience lies in favour of the party seeking the relief.

CCI approves acquisition of shareholding of Kotak Mahindra GIC by Zurich Insurance

The CCI approved the acquisition of 70% shareholding of Kotak Mahindra General Insurance Company Limited (“**Kotak Mahindra GIC**”)⁸ by Zurich Insurance Company Limited (“**Zurich Insurance**”)⁹ (referred to as the ‘**Proposed Transaction**’).

The CCI noted that there are no horizontal overlaps between the activities of the parties.¹⁰

In relation to vertical links, the CCI examined the potential vertical links between the activities of the parties¹¹ in the upstream market for the provision of general insurance services in India and the downstream market for the provision of reinsurance services in India. Given the low market shares of the parties with the presence of several significant players in the vertical market, the CCI noted that the Proposed Transaction is not likely to raise foreclosure concerns.

The CCI approved the Proposed Transaction in 53 (fifty-three) calendar days.

(Source: CCI Order dated February 6, 2024)

CCI approves acquisition of shareholding of API by Temasek, EvolutionX, Goldman Sachs, Naspers and CDPQ

The CCI approved the acquisition of shareholding of API Holdings Limited (“**API**”)¹² by: (a) MacRitchie Investments Pte. Ltd. (“**MacRitchie**”)¹³, belonging to Temasek Holdings (Private) Limited (“**Temasek**”)¹⁴; (b) EvolutionX Debt Capital Master Fund 1 Pte. Ltd. (“**EvolutionX**”)¹⁵; (c) Goldman Sachs India AIF Scheme-1 and Goldman Sachs India Alternative Investment Trust AIF Scheme-2¹⁶ belonging to Goldman Sachs Group, Inc. (together referred to as ‘**Goldman Sachs**’)¹⁷; (d) Naspers Ventures B.V. (“**Naspers**”)¹⁸ belonging to Naspers Limited; and (e) CDPQ Private Equity Asia Pte. Ltd. (“**CDPQ**”)¹⁹ belonging to Caisse de dépôt et placement du Québec (referred to as the ‘**Proposed Transaction**’).

Post the Proposed Transaction: (a) MacRitchie will acquire approximately 2% shareholding of API; (b) EvolutionX and Goldman Sachs will acquire up to 1% and up to 3.7% of the shareholding of API, respectively; and (c) Naspers and CDPQ will acquire additional shareholding of API.

⁸ It is a wholly owned subsidiary of Kotak Mahindra Bank Limited and is a part of the Kotak Group. It is engaged in the provision of general insurance products.

⁹ It is a wholly owned subsidiary of Zurich Insurance Group Ltd incorporated in Switzerland. It is engaged in the provision of insurance products and services and cross-border reinsurance services. It operates as a cross-border reinsurer in India and is not licensed to offer insurance products or services to Indian customers.

¹⁰ Zurich Insurance group (including its affiliates) and Kotak Mahindra GIC (including its affiliates).

¹¹ Zurich Insurance group (including its affiliates) and Kotak Mahindra GIC (including its affiliates).

¹² It is incorporated in India and is the ultimate holding company of the API group. API group is *inter alia* engaged in the: (a) wholesale sale and distribution of pharmaceutical products, medical devices, and over-the-counter products including fast-moving consumer goods, etc.; (b) provision of diagnostic services; and (c) provision of tele-medical consultation services etc. It also owns the platform 'PharmEasy' which is a marketplace that facilitates the retail sale of pharmaceutical products, medical devices, OTC products, etc.

¹³ It is incorporated in Singapore and is an investment holding company and does not engage in any business operation other than holding investments. It is an indirect wholly-owned subsidiary (“**WOS**”) of Temasek.

¹⁴ Temasek is an investment company based in Singapore. Temasek’s portfolio spans a broad spectrum of industries including life sciences.

¹⁵ It is incorporated in Singapore and is jointly held by Temasek and DBS Group Holdings Ltd. (“**DBS**”).

¹⁶ Acting through their investment manager, Goldman Sachs (India) Alternative Investment Management Private Limited.

¹⁷ Goldman Sachs is a Delaware corporation and is listed on the New York Stock Exchange. It is a global investment banking, securities, and investment management firm that provides a range of banking, securities, and investment services worldwide.

¹⁸ It is a WOS of Prosus N.V. and belongs to the Naspers group with Naspers Limited as the ultimate parent company. It is an investment holding company.

¹⁹ It is a part of the CDPQ group and a WOS of Caisse de dépôt et placement du Québec which is a Canadian institutional fund engaged in the business of making long term investments.

Assessment of Horizontal Overlaps

Horizontal overlaps between Temasek, EvolutionX and API

The CCI examined the horizontal overlaps between the activities of the parties²⁰ in the markets for the: (a) provision of diagnostic services (including its sub-segments) ("**Diagnosics Market**"); (b) provision of tele-medical consultation services ("**Tele-medical Consultation Market**"); (c) provision of wholesale sale and distribution of over-the-counter ("**OTC**") products ("**Wholesale OTC Market**"); (d) facilitation of retail sale of pharmaceutical products, medical devices and OTC products (including its sub-segments).

On the competition assessment, the CCI noted that: (a) the shareholding of MacRitchie will be diluted from approximately 14% to approximately 9%, and EvolutionX will hold an insignificant shareholding of up to 1%, in API, and they will acquire certain incremental rights, however, this will not result in any significant change in control dynamics of API; (b) combined market shares of the parties are low; and (c) several significant players are present in each of the relevant markets which will pose competitive constraints on the parties.

Horizontal overlaps between Goldman Sachs and API

In addition to the Diagnostics Market and Tele-medical Consultation Market, the CCI examined the horizontal overlaps between the activities of the parties²¹ in the market for the: (a) facilitation of retail sale of pharmaceutical products, and OTC products (including its sub-segments); and (b) provision of wholesale sale and distribution of medical devices, in India. On the competition assessment, the CCI noted that: (a) the combined market shares of the parties are low; and (b) several significant players are present in each of the relevant markets which will pose competitive constraints on the parties.

Horizontal Overlaps between Naspers and API

The CCI examined the horizontal overlaps between the activities of the parties²² in the: (a) Wholesale OTC Market; and (b) market for the facilitation of retail sale of OTC products. On the competition assessment, the CCI noted that: (a) the combined market shares of the parties are low; and (b) several significant players are present in each of the relevant markets which will pose competitive constraints on the parties.

Horizontal Overlaps between CDPQ and API

The CCI noted that there were no horizontal overlaps between the activities of the parties²³ in India.

Assessment of Vertical and/or Complementary Links

In relation to vertical links, the CCI examined the existing and potential vertical links between the activities of the parties²⁴ in several markets, however, given the low market shares of the parties with the presence of several significant players, the CCI noted that the Proposed Transaction is not likely to raise foreclosure concerns. The CCI approved the acquisition of shareholding of API by: (a) MacRitchie, EvolutionX and Goldman Sachs in 57 (fifty-seven) calendar days; (b) Naspers in 68 (sixty-eight) calendar days; and (c) CDPQ in 81 (eighty-one) calendar days.

JSA represented MacRitchie (Temasek) and EvolutionX before the CCI.

(Source: CCI Orders dated January 30, 2023, for API/MacRitchie/EvolutionX, API/GoldmanSachs, API/Naspers and API/CDPQ)

²⁰ Temasek (including its affiliates) and API (including its affiliates).

²¹ Goldman Sachs (including its affiliates) and API (including its affiliates).

²² Naspers (including its affiliates) and API (including its affiliates).

²³ CDPQ (including its affiliates) and API (including its affiliates).

²⁴ Temasek and EvolutionX (including its affiliates)/Goldman Sachs (including its affiliates)/Naspers (including its affiliates)/CDPQ (including its affiliates) and API (including its affiliates). The CCI noted there were no vertical and/or complementary links between CDPQ (including its affiliates) and API (including its affiliates).

CCI approves acquisition of minority shareholding of MG Motor by JSW Group

The CCI approved the acquisition of approximately 38% shareholding of MG Motor India Private Limited (“**MG Motor**”)²⁵ by JSW International Tradecorp Pte. Limited (“**JSW**”)²⁶ belonging to the JSW group (“**Proposed Transaction**”).

The CCI noted that there are no horizontal overlaps between the activities of the parties.²⁷

In relation to vertical links, the CCI examined the existing vertical link between the activities of the parties²⁸ in the upstream market for the manufacture and sale of cold rolled closed annealed steel (“**Product**”) and the downstream market for the manufacture and sale of passenger vehicles, in India (“**PV Market**”). Given the: (a) minuscule volume of the Product procured by MG Motor from the JSW group out of the total volume of the Product manufactured by the JSW group in financial year (“**FY**”) 2022-23; (b) presence of several significant players even though the JSW group had a market share of 20-25% in the upstream market; and (c) entry of certain new players and expansion of existing players in the upstream market, the CCI noted that the Proposed Transaction is not likely to raise foreclosure concerns

In relation to vertical links, the CCI examined the potential vertical link between the activities of the parties²⁹ in the upstream market for the manufacture and sale of surface coated steel products and the downstream PV Market. Given the: (a) presence of several significant players even though the JSW group had a market share of 45-50% in the upstream market; and (b) entry of certain new players and expansion of existing players in the upstream market, the CCI noted that the Proposed Transaction is not likely to raise foreclosure concerns.

The CCI approved the Proposed Transaction in 43 (forty-three) calendar days.

(Source: CCI order dated January 23, 2024)

CCI approves acquisition of Wistron Infocom by Tata Electronics

The CCI approved the acquisition of 100% shareholding of Wistron Infocom Manufacturing Private Limited (“**Wistron**”)³⁰ by Tata Electronics Private Limited (“**TEPL**”)³¹, belonging to the Tata group (“**Proposed Transaction**”).

The CCI examined potential horizontal overlap between the activities of the parties³² in the market for provision of electronic manufacturing services (“**EMS**”) for smartphones in India³³ (“**EMS Market**”). On the competition assessment, the CCI noted that: (a) the market share of Wistron is low; and (b) several significant players are present in the relevant market which will pose competitive constraints on the parties. In view of the same, the Proposed Transaction is not likely to raise competition concerns.

In relation to vertical links, the CCI examined potential vertical link between the activities of the parties³⁴ in the upstream market for manufacture and supply for smartphone enclosures in India and downstream market for

²⁵ It is primarily engaged in the automobile original equipment manufacturing business, *i.e.*, manufacture and sale of passenger cars (including electronic vehicles). It is also engaged in the sale of automobile parts and accessories through dealers and an app, providing after-sales services for its cars, and leasing its cars.

²⁶ It is a newly incorporated company and belongs to the JSW group. The JSW group has presence in various sectors including steel, energy, infrastructure, cement, paints, venture capital, realty and sports in India, Europe, USA, and Africa.

²⁷ JSW group (including its affiliates) and MG Motor (including its affiliates).

²⁸ JSW group (including its affiliates) and MG Motor (including its affiliates).

²⁹ JSW group (including its affiliates) and MG Motor (including its affiliates).

³⁰ The Target is engaged in electronic manufacturing services (*i.e.*, third-party contract manufacturing of electronics) for smartphones in India.

³¹ It manufactures smartphone enclosures (*i.e.*, the frame of the phone on which other components of a smartphone are assembled), a high precision component for smartphones. TEPL also proposes to provide electronic manufacturing services for smartphones in India.

³² Tata group (including its affiliates) and Wistron (including its affiliates).

³³ TEPL proposes to provide EMS for smartphones in the near future.

³⁴ Tata group (including its affiliates) and Wistron (including its affiliates).

manufacture of smartphones and the EMS Market. Given the low market shares of the parties with the presence of several significant players and the high countervailing buyer power exerted by smartphone brand manufacturer on EMS providers, the CCI noted that the Proposed Transaction is not likely to raise foreclosure concerns.

The CCI approved the Proposed Transaction in 49 (forty-nine) calendar days.

(Source: [CCI order dated January 23, 2024](#))

Miscellaneous

Government publishes draft rules in relation to the merger control regime in India for public comment

The Ministry of Corporate Affairs (“MCA”), Government of India (“GoI”) has published the following draft rules on March 11, 2024, inviting public comments until April 10, 2024:

- 1 Draft Competition Commission of India (Green Channel) Rules, 2024 (“**Draft GCR Rules**”),
- 2 Draft Competition Commission of India (De-Minimis) Rules, 2024 (“**Draft De Minimis Rules**”), and
- 3 Draft Competition Commission of India (Exempted Combination) Rules, 2024 (“**Draft Exemption Rules**”).

An overview of the draft rules is provided below:

Draft GCR Rules

The Draft GCR Rules provide that a notice for a proposed transaction can be filed to the CCI under the green channel route if there are no horizontal overlaps, vertical and complementary links (“**Overlaps**”) between the activities of the parties, their respective group entities and their *affiliates*, in India. The Draft GCR Rules propose to modify the definition of ‘*affiliate*’ as shown in the table below:

Test for determining an Affiliate	
Existing Test	Revised Test
Direct or indirect shareholding of 10% or more; or	10% or more of the shareholding or voting rights of the enterprise; or
Right or ability to nominate a director or an observer to the board; or	Right or ability to have a representation on the board of directors of the enterprise either as a director or as an observer; or
Right or ability to exercise any special right (including any advantage of commercial nature with any of the party or its affiliates) that is not available to an ordinary shareholder.	Right or ability to access CSI of the enterprise.

Draft De Minimis Rules

The Draft *De Minimis* Rules codify the recently revised *De Minimis* Exemption thresholds issued vide notification dated [March 7, 2024](#) by the MCA. By way of the notification, the Government has revised the *De Minimis* thresholds as reflected in the table below:

Entity	Assets	Or	Turnover
<i>Target enterprise</i>	INR 450 crores (USD 54.11 million)		INR 1,250 crores (USD 150.31 million)

Draft Exemption Rules

At present, Regulation 4 read with Schedule I of the Competition Commission of India (Procedure in regard to the transaction of business relating to combinations) Regulations, 2011 (as amended) ("**Combination Regulations**") sets out ten (10) categories of transactions that are 'ordinarily' not likely to cause an appreciable adverse effect on competition in the relevant market in India, and therefore do not 'normally' require notification to the CCI.

The Draft Exemption Rules set out 12 (twelve) categories of transactions that will be exempt from notification to, and approval from, the CCI. Once notified, the Draft Exemption Rules will re-introduce and/or modify the categories of transactions mentioned in Schedule I of the Combination Regulations. For a summary of the Draft Exemption Rules refer to [JSA Competition Law Prism \(March, 2024\)](#).

Government publishes report of Committee on Digital Competition Law

The MCA had constituted a Committee on Digital Competition Law ("**Committee**") to examine the need for a separate law on competition in digital markets. The Committee has submitted its report to the MCA (hereinafter referred to as the '**Report**') along with the Draft Digital Competition Bill, 2024 ("**Draft DCB**") for public comment until April 15, 2024.

The Committee has recommended enacting a separate Digital Competition Act to regulate systemically significant digital enterprises ("**SSDEs**") by imposing several ex-ante obligations upon them.

The key recommendations of the Committee are as follows:

1. **Scope and applicability of the Draft DCA:** The Draft DCB will apply to a pre-identified list of "core digital services" ("**CDS**") which are susceptible to anti-competitive practices. The Draft DCB sets out an inclusive list of services such as online search engines, online social networking services, cloud services, online intermediation services etc. which will qualify as CDS. The said list could be revised from time to time by the GoI, in consultation with the CCI.
2. **Thresholds and criteria for designating any enterprise as SSDE:** An enterprise may be designated as an 'SSDE for a CDS if it has a significant presence in the provision of such CDS in India. The Draft DCB sets out 2 (two types of tests i.e., a quantitative test based on financial thresholds and user thresholds and a qualitative to determine whether an enterprise will qualify as an SSDE for a CDS.
 - a) **Quantitative Test:** An enterprise will be deemed as an SSDE if it qualifies the financial thresholds and user thresholds as set out below:
 - i) **Financial Threshold:** If an enterprise in each of the immediately preceding 3 (three) FYs has a:
 - turnover of more than INR 4,000 crores (Indian Rupees four thousand crore) in India; or

- global turnover of more than USD 30 billion (US Dollars thirty billion) (approximately INR 2,49,480 crore) (approximately Indian Rupees two lakh forty-nine thousand four hundred and eighty crore); or
 - gross merchandise value of more than INR 16,000 crore (Indian Rupees sixteen thousand crore) in India; or
 - global market capitalization of more than USD 75 billion (US Dollars seventy-five billion) (approximately INR 6,23,700 crore) (approximately Indian Rupees six lakh twenty-three thousand seven hundred crore) or its equivalent fair value of more than USD 75 billion (US Dollars seventy-five billion) (approximately INR 6,23,700 crore) (approximately Indian Rupees six lakh twenty-three thousand seven hundred crore).
- ii) **User Threshold:** If an enterprise in each of the immediately preceding 3 (three) FYs in India has provided CDS to: (A) at least 1,00,00,000 (one crore) end-users; or (B) at least 10,000 (ten thousand) business users.

The GoI in consultation with the CCI can review the aforesaid thresholds every 3 (three) years from the date of commencement of the Digital Competition Act. If an enterprise meets the aforesaid quantitative threshold criteria, then it must notify the CCI within 90 (ninety) days of meeting the said criteria. The CCI, after reviewing the information, may designate an enterprise as an SSDE for a period of 3 (three) years.

- b) **Qualitative Test:** Even if an enterprise does not meet the quantitative test, the CCI can designate an entity as an SSDE for a CDS if the CCI is of the opinion that such enterprise has a significant presence for a CDS after considering factors like volume of data aggregated, size and resource of an enterprise, direct and indirect network effects, and bargaining power of an enterprise *vis-à-vis* business users or end consumers etc.
3. **Associate Digital Companies:** Where an enterprise has been designated as an SSDE or the CCI is evaluating whether it should be designated as an SSDE, and such enterprise belongs to a group wherein one or more group companies are directly or indirectly engaged in the provision of CDS, the CCI can designate such group companies as Associate Digital Companies (“ADCs”), after giving them an opportunity of hearing.
 4. **Obligations of SSDEs and ADCs:** The SSDEs and ADCs will be subject to certain obligations such as no self-preferencing, operating on fair and non-discriminatory terms with users, not use or rely on non-public data of business users without their consent, not to restrict use of third-party applications on their platforms, and not to restrict business users from promoting offers to its end users etc.
 5. **Enforcement and procedural framework under the Draft DCB:** Provisions of the Competition Act regarding powers of the CCI and the DG, the right to claim compensation, the power to issue interim orders, and other provisions will apply *mutatis mutandis* to the DCB. Similarly, the settlements and commitments regime envisaged under the DCB shall be the same as the Competition Act.
 6. **Power of inquiry & appeal process:** The inquiry process under the DCB is in alignment with the Competition Act. The CCI can conduct an inquiry on its knowledge, or on receipt of information or a reference by the GoI, State Government or a statutory authority and direct the DG to investigate whether the SSDEs and ADCs are in non-compliance of their obligations under the DCB. Appeals under the DCB shall lie before the National Company Law Appellate Tribunal and finally to the Supreme Court.
 7. **Penalties:** The CCI has the power to impose penalties and issue other directions in case of non-compliance with the obligations under the DCB, which can be up to 10% of the SSDE’s or its ADE’s global turnover in the preceding FY. In case of individuals, who were in-charge or responsible for the conduct of SSDE or its ADE at the time of the contravention, the penalty can be up to 10% of the average of the income for the preceding 3 (three) FYs.

(Source: Report)

CCI issues show cause notice to Muthoot Finance for non-disclosure of material facts in the complaint

As per media reports, on March 14, 2024, the CCI issued a show cause notice to Muthoot Finance Limited (“MFL”) for omission of key facts in its complaint to the CCI against the debenture trustees.

In September 2021, MFL filed a complaint before the CCI *inter alia* alleging that debenture trustees were exploiting their market dominance by imposing exorbitant fees for facilitating non-convertible debenture issuances. During CCI’s investigation, it was discovered by the CCI that MFL had filed a similar complaint with the Securities and Exchange Board of India and had failed to disclose the same to the CCI.

The CCI (General) Regulations, 2009 mandate a complainant to disclose all parallel proceedings in a case to the CCI to discourage entities from forum shopping and filing complaints on matters that are already under investigation by other regulators.

(Source: [Money Control](#))

CCI Chairperson clarifies that amended provisions will apply to pending cases before CCI

In February and March 2024, the Government of India brought into effect provisions relating to: (a) leniency plus; (b) commitment and settlement; (c) penalty on global turnover; and (d) compensation, under the Competition (Amendment) Act, 2023 along with the respective governing regulations. For a detailed summary, refer to [JSA Newsletter of February 2024](#).

As per media reports, the Chairperson of the CCI, in an interview given to Press Trust of India, has clarified that the newly introduced provisions and the governing regulations will apply to all the cases including the ones presently pending before the CCI.

(Source: [Hindustan Times](#))

CCI is conducting enquiries against certain FinTech Companies and Online Intermediary Service Providers

As per media reports, the Chairperson of the CCI, in an interview given to Press Trust of India, has stated that the CCI is conducting enquiries against certain fintech companies and online intermediary service providers. The CCI is evaluating how technology is being leveraged by fintech players and whether that is impacting competition in the market. As per the Chairperson, the Digital Market Data Unit of CCI has also become functional.

(Source: [Economic Times](#))

Competition Practice

Since the inception of the Indian competition regime, JSA has been a one-stop shop for all types of competition and anti-trust-related matters. As such, the team's in-depth understanding of the competition law, coupled with its commercially focused litigation skills has been the cornerstone on which it deals with matters relating to cartelisation (including leniency), abuse of dominance, vertical agreements, and dawn raid before the Competition Commission of India and appellate courts. The team regularly advises clients on general competition law issues arising from day-to-day business strategies and conducts competition compliance training for clients. Given the team's continued involvement with the regulator, coupled with its balanced and practical approach to competition law, it has been instrumental in shaping the competition law jurisprudence in India.

Over the years, the team has developed a reputation of not only being well regarded by its peers but also for having developed a good working relationship with the regulatory authorities. As such our lawyers have been involved in drafting statutory regulations and have represented the Indian competition law fraternity at various competition law seminars, workshops, and advocacy & public awareness programs across the world. The team's expertise (including team members) has been widely recognised by various leading international rankings and publications including Chambers and Partners, Who's Who Legal, Global Competition Review, Benchmark Litigation, Asialaw, and the Legal 500.

This Newsletter has been prepared by:



Vaibhav Choukse

Partner & Head of Practice
(Competition Law)



Ela Bali

Partner



Nripi Jolly

Principal Associate



Faiz Siddiqui

Associate

		
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For more details, please contact km@jsalaw.com

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