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## Competition Commission of India (CCI) releases draft Combination Regulations 2023 and settlement and commitment regulations for public feedback

The CCI has released the draft regulations to introduce transaction value threshold for merger filings in India. Till now, only M&As that cross the thresholds specified in section 5 of the Competition Act, 2002 (“Act”) amount to ‘combination’, requiring prior approval of the CCI. These thresholds are in terms of assets and turnover of the parties (as well as the groups involved) to the transaction. However, many significant transactions escaped CCI’s assessment as the parties did not cross the applicable thresholds. To ensure that such transactions do not escape the purview of the CCI, the draft regulations (pursuant to Competition (Amendment) Act, 2003) have introduced deal value thresholds so that transactions: (a) with a deal value in excess of INR 2,000 crore (approx. USD 252 million); and (b) where either party has ‘substantial business operations in India’ will need to notify and seek prior approval of the CCI.

The CCI has also sought to widen the definition of deal value for mergers and acquisition exercise to include “every valuable consideration, whether direct or indirect, immediate or deferred, cash or otherwise” in its draft Combination Regulations 2023. The regulations inter alia propose to include the value of shares or assets being acquired and consideration for contractual rights – such as non-compete clause,



licensing of intellectual property rights and technology assistance and inter-connected transactions. The draft regulations inter alia also define the inter-connected transactions to be “any acquisition by one of the parties or its group entity in the enterprises being acquired or merged or amalgamated in the transaction, anytime during the period of two years before the relevant date, shall also be deemed to be interconnected transaction.

The CCI has also released draft settlement and commitment regulations for public feedback. provisions with respect to settlement and commitment. Vide the said draft regulations, CCI can get into a settlement agreement with an enterprise accused of violating the Act. Alternatively the party can give commitments, based on which an inquiry can be closed.

## CCI gives relief to Curefit Services Pvt. Ltd.

The CCI has dismissed the allegations brought against Curefit Services Pvt. Ltd., which included allegations of abuse of dominant position and anti-competitive behavior through data exploitation. The case was filed by Creed Gym, represented by Mr. Vangari Prithviraj, under sections 3 and 4 of the Act. The allegations centered on Curefit’s alleged breach of the exclusivity clause stated in clause 9 of their collaboration agreement, its misuse of dominant position, and participation in anti-

competitive practices within the fitness industry. It was claimed that Curefit shared customer data without consent, provided unauthorized discounts, and partnered with fitness centers within restricted distances. The CCI concluded that that the removal of clause 9 could have fostered competition among collaborating fitness centers, and that there was no substantial evidence to back up these allegations. In view thereof, no case of contravention under sections 3 and 4 of the Act was made out.

## CCI issues cease and desist order against Chandigarh Housing Board (“CHB”)

The CCI has issued a cease and desist order against the CHB based on allegations of abuse of dominant position. The complaint was rooted in the CHB’s failure to complete the construction of a Self-Financing Housing Scheme within the initially advertised timeframe of 18 months. According to the complainant, the CHB was supposed to start allotting flats only after the construction was finished by the contractor. However, the CHB issued an Acceptance-cum

Demand Letter (ACDL) outlining a payment schedule, including a 12% annual interest rate, with the final installment due within 18 months of ACDL issuance. The complainant’s flat allotment was cancelled by CHB due to non-payment of an installment, despite the construction not being completed. Subsequently, the CHB also removed the complainant’s registration. The complainant further alleged that the CHB imposed an unfair interest rate and introduced one-sided terms, all while the housing scheme’s construction

remained incomplete. CCI determined the relevant market as the “market for the provision of services for the development and sale of residential flats in Chandigarh”, and concluded that CHB held a dominant position, allowing it to operate independently of the competitive forces present in the relevant market. The CCI finally

decided that not disclosing the possession delivery date to flat applicants and imposing full-month penal interest for a one-day delay in the instalment payment constituted an abuse of dominant position under section 4 (2)(a)(i) of the Act.

## CCI clears Tata Motors of coercion and unfair practices allegations

The allegations levelled against Tata Motors by the Informant involved claims of coercive tactics employed by the automaker to enforce specific vehicle orders through dealer compliance. Following an extensive inquiry, the CCI examined emails and dealership agreements. It noted Tata Motors’ suggestion of specific vehicle orders, attributing it to administrative convenience. Tata Motors clarified that alternate order methods existed, and the letterhead requirement aimed

to streamline records. Investigation indicated other dealers faced no coercion. Claims of an unfair non-automobile business clause lacked evidence, as Tata Motors didn’t deny approvals. Territorial restrictions’ impact on competition was considered insufficient. Thus, the CCI concluded that Tata Motors’ actions were administratively driven, dismissing all allegations. In view thereof, the CCI rejected the accusations alleging contravention of provisions of section 3 and section 4 of the Act against Tata Motors

## CCI dismisses allegations against National Accreditation Board for Testing and Calibration Laboratories over laboratory accreditation practices:

The CCI reaffirmed its previous decision in favor of the National Accreditation Board for Testing and Calibration Laboratories (NABL), dismissing the claims brought against them. The complainant alleged that various entities, including government departments and agencies, were violating the provisions of section 3(4) and section 4 of the Act. The allegation stemmed

from certain circulars and clauses in the tenders issued by these entities, which were seen as promoting NABL’s accreditation for laboratory testing services. This was argued to create an anti-competitive environment, resulting in entry barriers and negatively impacting competition, particularly for new entrants. The CCI noted that the evidence provided by the complainant did not sufficiently demonstrate any collusion



between the government bodies, agencies, and NABL. Therefore, the CCI concluded that there was no breach of section 3(4) of the Act. Additionally, while the complainant asserted that NABL's accreditation requirement granted them a virtual monopoly, the CCI took into account the larger market size for laboratory testing services that extended beyond the activities of the opposing parties (OPs). The CCI also raised doubts about the appropriateness of

segregating distinct relevant markets for each OP, as the market for laboratory testing services exhibited diversity and was not solely reliant on OPs' operations. Consequently, evaluating the individual dominance of each OP within their respective markets might not be feasible. The CCI concluded that there was no prima facie evidence of contravention under either section 3 or section 4 of the Act.

## CCI clears Hero FinCorp from Allegations of Abuse of Dominance in the Loan Against Property Market

The information in the present matter was filed by Synco Industries Limited under section 19(1)(a) of the Act, alleging that Hero FinCorp Ltd. a non-banking financial company abused its dominant position by charging excessive interest rates on a loan against property. The Informant claimed that Hero FinCorp Ltd did not align interest rates with RBI's repo rate cuts and applied unreasonable charges. The Informant therefore sought various

remedies, including investigating OP's practices, rate-setting transparency, and linking floating rates to the RBI repo rate. The CCI defined the relevant market as the "market for provision of loan against property in India and determined that Hero FinCorp Ltd. lacked dominance in this market due to the presence of multiple similar service-offering financial entities. The CCI concluded that there was no prima facie contravention of section 4 of the Act evident.

## CCI dismisses allegations against the Association of Certified Fraud Examiners ("ACFE") Inc.

CCI has dismissed information alleging abuse of dominance and unfair restrictions by ACFE in coaching services for Certified Fraud Examiner exam. The present information was filed by Mrs. Kanwaljeet Kaur Soni under section 19(1)

(a) of the Act, against the ACFE, M/s Netrika Consulting India Private Ltd., and the Open Thinking Academy. The informant alleged that ACFE, a provider of certification courses for fraud examiners, was misusing its dominant position and imposing biased terms on study materials

and coaching for the Certified Fraud Examiner (CFE) course. The informant defined the primary market as CFE certification and related training services, and the secondary market as CFE exam preparation. The informant alleged ACFE's dominance misuse through biased byelaws, which hampers competition in the primary market (CFE exam prep), impacts the secondary market (exam coaching), favoring ACFE, and restricting market access. The CCI concluded that no case

of contravention of the Act was established. The CCI's conclusion was shaped by the Informant's dialogues with ACFE about copyright concerns and cease-and-desist notifications, prompting them to skip an in-depth case evaluation. In view thereof, no case of contravention of section 4 of the Act was made out. The CCI concluded by closing the filed information against the opposite parties while ensuring the informant's right to pursue legal remedies remains unaffected.

## CCI closes case on alleged procurement restrictions in book supply market

CCI has concluded its assessment of the case involving alleged procurement restrictions in the book supply market, ultimately closing the case due to the lack of substantiated violations. The present case was filed under section 19(1)(a) of the Act alleging that several institutions, including universities and colleges, had set forth restrictive conditions to favor a select group of suppliers, potentially limiting the competitive landscape in the book supply market. The Informant contended that these conditions impeded the involvement of smaller book suppliers, negatively impacting competition. Additionally, it claimed that certain

institutions structured tenders to benefit a select few suppliers, thus compromising fair competition. However, the CCI observed that the procurement entities, acting as consumers, have the right to tailor tender terms to their specific needs and optimize benefits. The CCI emphasized that consumers should have the freedom to exercise their choice freely in a market economy. Further the Informant's contention that restrictive conditions created an oligopoly or monopoly was not substantiated. In view thereof, no case of contravention of under section 3 and section 4 of the Act was made out.

## CCI clears Boehringer Ingelheim Pharma GmbH & Co. KG (BIPG) from allegations of abuse of dominance in pharmaceutical patent dispute

The CCI has cleared Boehringer Ingelheim Pharma GmbH & Co. KG of alleged abuse of dominance, determining that its litigations and actions did not prima

facie contravene provisions of the Act. The case was filed by Macleods Pharmaceuticals Limited (Informant) and pertained to the conduct of BIPG in initiating legal actions and issuing notices



against competitors, particularly involving the pharmaceutical drug 'Linagliptin' used in treating Type 2 diabetes. The Informant alleged that the BIPG Co. engaged in frivolous and vexatious patent litigation to prohibit competitors, including the Informant, from using 'Linagliptin' in their products. The Informant contended that such actions, along with communications to medical practitioners, were anti-competitive in nature and constituted abuse of dominant position. The CCI assessed if the BIPG Co.'s legal actions were groundless and driven by anti-competitive motives, potentially violating section 4 of the Act. It examined litigation history, including cases against the Informant and rivals. Despite gaining interim injunctions

against generics of 'Linagliptin,' some were lifted, permitting competitors to use it. The CCI recognized patent validity as a court matter, not in its jurisdiction, concentrating on identifying unfounded litigations and anti-competitive motives hindering competition. The CCI concluded that it was not possible, at the current stage, to definitively categorize the BIPG Co. litigations and actions as either genuine or anti-competitive, leading to the absence of a prima facie case for investigation. In view thereof, no case of contravention of under section 4 of the Act was made out.

## CCI Issues Order Against Chemists Associations for Anti-Competitive Practices in Sriganganagar District, Rajasthan

The CCI issued an order against district and tehsil level chemists associations in Sriganganagar district, Rajasthan which were found to be indulging in anti-competitive practices. The Informant, Solar Life Sciences Medicare Private Ltd. ('Solar'), alleged that district and tehsil level chemists' associations in Sriganganagar district, Rajasthan, were involved in anti-competitive behaviour by jointly boycotting Solar's pharmaceutical products. Following an investigation and examination of

the associations' Presidents' statements, the CCI found that the associations had violated section 3(3)(a) and section 3(3)(b) of the Act, read with section 3(1) of the Act, and held the Presidents accountable under section 48 of the Act. However, factoring in mitigating circumstances, the CCI chose not to levy monetary penalties. Instead, it instructed the associations, through their respective Presidents, to ensure that their members comply with the Act's regulations.

## Combination Approvals

- CCI has approved the merger of Tata SIA Airlines which operates Vistara with Tata group's Air India subject to the parties complying with certain voluntary commitments offered by the parties.
- CCI has approved the proposed acquisition of Rhone Capital in RHI Magnesita BV. The transaction pertains to the acquisition of up to 29.9% in RHI Magnesita BV by Ignite Luxembourg Holdings.
- The CCI has approved the merger of Tata Cleantech Capital Limited (TCCL) and Tata Capital Financial Services Limited (TCFSL) into Tata Capital Limited (TCL). This strategic consolidation aims to enhance operational efficiency, strategic alignment, and service expansion.
- The acquisition of around 30% stake in IBS Software Pte by Apax Partners from Techware Singapore Holdings through Pelipper HoldCo SARL has received CCI's approval.
- The National Company Law Appellate Tribunal (NCLAT) has upheld the decision of the Competition Commission of India (CCI) to dismiss an appeal against the merger of cinema giants PVR and INOX.
- Kotak Special Situations Fund's investment in Biocon Biologics Ltd has been approved by CCI through the green channel route, aiding Biocon Biologics' acquisition of Viatrix' biosimilars business.
- The CCI has approved the acquisition of a 90% equity stake in HDFC Credila Financial Services by a consortium of private equity firms, including BPEA EQT and ChrysCapital. The buyers consist of Kopvoorn from BPEA EQT and ChrysCapital's subsidiaries Moss Investments, Infinity Partners, and Defati Investments Holding. The deal involves acquiring equity shares and voting rights in HDFC Credila.
- The NCLAT in New Delhi has rejected INSCO's appeal against CCI's approval of AGI Greenpac's acquisition of Hindustan National Glass.
- CCI has given its approval for Orogen-Brunson L.P. for acquiring a shareholding in Brillio Holdings Inc. Orogen-Brunson LP is linked with Orogen Holdings LLC and Atairos Group, Inc. Brillio Holdings Inc., a US-based firm, provides global tech consulting and solutions, focusing on digital tech and big data analytics. The target company operates in India via its subsidiary, Brillio India Technologies Pvt Ltd.

## Penalties

- The CCI has imposed penalty of ₹40 lakh on NTPC Ltd for the latter's failure to notify the CCI before completion of its 35.47 stake acquisition in Ratnagiri Gas & Power Pvt Ltd (RGPPL) on December 31, 2020.
- The CCI fined Abu Dhabi Investment Authority and TPG Group Rs 55 lakh for incorrect disclosures during a green channel merger process. They sought approval for acquiring a stake in UPL Sustainable Agri Solutions



Ltd. via Upswing Trust. The Trust, co-owned by TPG and ADIA, had a 22.2% stake in UPL Co., creating an overlap. The argument of intragroup transaction exemption was rejected as green channel is based on objective criteria, not discretion. The acquisition was not eligible due to overlapping business activities.

- CCI fined Bharti Airtel Rs. 1 crore for not notifying its acquisition of a stake in Bharti Telemedia as required under the Competition

Act's section 6(2). In February 2021, Airtel acquired a 20% stake in Bharti Telemedia from Lion Meadow Investment for Rs. 3,126 crore to bolster its "One Home" Strategy. Airtel is reviewing the order while evaluating its response.

- CCI fines Axis Bank ₹40 lakh for neglecting to inform about its 9.91 percent stake acquisition in CSC e-governance, completed on November 23, 2020.



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