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## Ministry of Corporate Affairs (“MCA”) releases Draft Digital Competition Bill and invites comments from public

MCA published the Report of Committee on Digital Competition Law and the Draft Bill on Digital Competition Law and invited public comments/ suggestions by April 15, 2024. The Report seeks to address the issues that may become concerns in the anti-trust regime in the context of digital markets. The proposed law will provide for ex-ante regulation of the conduct of large digital enterprises before instances of anti-competitive conduct transpires. Some of the major recommendations of the Report are as under:

### Introduction of a Digital Competition Act with ex-ante measures

The Committee has recommended the introduction of an ex-ante legislation i.e. Digital Competition Act, specifically applicable to large digital enterprises, to supplement the Competition Act, 2002 (“**Act**”). Such an ex-ante law should ensure that behaviours of large digital enterprises are proactively monitored, and that the Competition Commission of India (“**CCI**”) intervenes before instances of anti-competitive conduct transpire. A draft of the legislation (“**Draft DCB**”) has been included in the report.

### Scope and applicability

The Committee has proposed that the Draft DCB should apply to a pre-identified list of Core Digital Services that are susceptible to



concentration. The Committee has recommended that this list is drawn up basis CCI's enforcement experience, market studies, and emerging global practices.

### Regulation of digital enterprises with 'significant presence':

The Committee has recommended that the Draft DCB should only regulate enterprises which have a 'significant presence' in the provision of a Core Digital Service in India and the ability to influence the Indian digital market. The Committee has recommended that such enterprises be designated as 'Systemically Significant Digital Enterprises ("SSDEs")'.

### Thresholds and criteria for designation as SSDEs:

Committee has proposed that an enterprise is deemed an SSDE if it passes a twin test demonstrating 'significant presence': (a) the 'significant financial strength' test which comprises quantitative proxies of economic power, i.e. India-specific turnover, global turnover, global market capitalisation, and gross merchandise value; and (b) the 'significant spread' test which evaluates the extent to which an enterprise has been present in the provision of a Core Digital Service in India on the basis of the number of end-users and business users. The Draft DCB obligates enterprises to self-assess their fulfilment of these thresholds and report the same to the CCI. Additionally, the Draft DCB envisages residuary powers for designation in the form of 'qualitative' criteria for designating certain enterprises as SSDEs that do not meet the quantitative thresholds but nonetheless have the ability to significantly influence the market in which they operate.

### Enforcement

The Committee has recommended borrowing the procedural framework from the Competition

Act for the purposes of the Draft DCB.

### Remedies

The Committee proposes that a monetary penalty for non-compliance with ex-ante obligations is restricted to a maximum of 10% of the global turnover of the SSDE in line with the penalty regime under the Competition Act.

Some of the specific conduct which have been mandated/prohibited under the Draft DCB are as under:

- a. **Fair and Transparent Dealing** - SSDEs are obliged to operate in a fair, non-discriminatory, and transparent manner with end users and business users.
- b. **Self-Preferencing** – SSDEs cannot directly or indirectly, favour their own products, services, or lines of business.
- c. **Data Usage** – SSDEs cannot, directly or indirectly, use or rely on non-public data of business users operating on their Core Digital Service to compete with such business users on the identified Core Digital Service of the SSDEs. Further, without the consent of the end users or business users, SSDEs cannot:
  - intermix or cross use the personal data of end users or business users collected from different services including their Core Digital Service; or
  - permit usage of such data by any third party.
- d. **Restricting third-party applications** – SSDEs cannot restrict or impede the ability of end users and business users to download, install, operate or use third-party applications or other software on its Core Digital Services and it must allow end users and business users to choose, set and change default settings.
- e. **Anti-steering** - SSDEs cannot restrict business users from, directly or indirectly,

communicating with or promoting offers to their end users, or directing their end users to their own or third-party services, unless such restrictions are integral to the provision of the Core Digital Service of the SSDEs.

f. **Tying and Bundling** – SSDEs cannot require or incentivise business users or end users of the identified Core Digital Service to use one or more of the SSDEs' other products or services.



## Government proposes exemption of certain mergers and acquisitions deals from the approval of CCI

The Government has proposed to exempt intra-group transaction and certain types of minority and creeping acquisitions and rights issues from the requirement of the CCI's approval. The exemption has been proposed since the transactions will not have an impact on the competition in the market. This will reduce the regulatory burden of the CCI

and provide a big relief to the parties involved in mergers and acquisitions. The rules may modify the test with regards to affiliates and the overlap between the parties to the merger and acquisition transaction. The regulations were published for public comment in September 2023 but did not mention about the exempted categories of the transactions.



## CCI closes complaint alleging dominance abuse by MGF Development Ltd. & Ors., given civil nature of disputes

CCI has dismissed a complaint alleging contravention of sections 3 and 4 of the Competition Act, 2002 ("**Act**") by MGF Development Ltd. The complaint was with regards to unfair trade practices in the management of Metropolitan Mall, Gurugram by charging high maintenance and electricity charges from retail shop-owners in the Mall (**Informants**). The CCI held that there were no concerns with regards to competition based on the nature of allegations and dismissed the complaint. CCI was of the opinion that the grievances of the Informants pertaining to issues

like payment of maintenance and electricity charges, rights and entitlement to joint common areas are in the nature of contractual/civil issues/disputes. Moreover, the complaint had failed to demonstrate how the opposite parties were competitors, which is a requirement under section 3(3) of the Act. Further, CCI also noted that the Informants had already filed a civil suit against opposite parties claiming permanent injunction.



## CCI rejects start-ups plea for interim relief and orders probe into Google's User Choice Billing system, finds prima-facie dominance abuse

Three separate cases filed by People Interactive India (parent entity of Shaadi.com), Mebig Labs (Kuku FM's parent), and industry bodies Indian Broadcasting and Digital Foundation (IBDF) and Indian Digital Media Industry Foundation (IDMIF) had filed a complaint against Alphabet Inc and Google LLC before the CCI alleging abuse of dominant position. All three parties accused Google of violating section 4 of the Act. The biggest grievance was the 11% to 26% commission charged from app developers even on payments made through alternate billing systems. It was alleged that the excessive service fee has led to the app developers having less resources at their disposal to develop their app offerings. Moreover,

they also alleged that several of them would be forced to shut shop owing to high operational costs, causing denial of market access to such app developers. The CCI held that the Informants have not been able to demonstrate a case in their favour for grant of interim relief i.e. imposing a complete restraint on Google from collecting its fee. CCI has ordered the Director General to conduct a detailed investigation since CCI was of the opinion that Google has violated the provisions of section 4 (2) (a), (b) and (c) of the Act which warrants a detailed investigation. The CCI has directed the Director General to complete the investigation and submit a consolidated report within 60 days.



## NCLAT dismisses plea seeking court fee waiver by refiling compensation application against CCI order

NCLAT dismisses the interlocutory application filed by Venus Testing and Research Laboratory seeking waiver of the court fees by refiling the compensation application in the case against a CCI's order. The Applicant had discovered that his advocate without instructions had withdrawn the compensation application. When the Applicant tried to refile the compensation application by engaging another advocate, he was asked by the Registry to pay a court fee of Rs 3 lakhs.

CCI defended the application by stating that the opposite parties have taken the corrective action in compliance with the CCI's order. Rule 4 (3) of the Competition Appellate Tribunal Rules, 2009 provided for waiver after taking into consideration the economic conditions or indigent circumstances of the Appellant. The NCLAT held that the present case did not fulfil the ingredient requirements.



# Combination Orders

CCI has approved the following transactions:

- Acquisition of stake in Asian Institute of Nephrology and Urology Private Limited by TPG Growth V SF Markets Pte. Ltd. and Waverly Pte. Ltd. through Asia Healthcare Holdings Pte. Ltd.;
- Merger of a financial technology company, Garagepreneurs Internet Private Limited with the North East Small Finance Bank;
- Acquisition of Maini Precision Products' 59% shareholding by Ring Plus Aqua;
- Acquisition of Kesoram Cement Business from Kesoram Industries Limited by UltraTech Cement Limited;
- Acquisition of certain shareholding of Shriram Investment Holdings Private Limited by Shriram Ownership Trust;
- 100 per cent acquisition of Lanco Amarkantak Power Limited by Adani Power;
- Manipal Group's chief, Ranjan Pai's investment in the online pharmacy, PharmEasy;
- Subscription to CCPS B of API Holdings by MEMG LLP and 360 ONE;
- Subscription to equity shares of Max Life Insurance Company Limited by Axis Bank Limited;
- Subscription of compulsorily convertible preference shares of Pritam International Private Limited (Target) by India Advantage Fund S5 I (IAF S5 I), HCL Corporation Private Limited (HCL Corp), Mirabilis Investment Trust (Mirabilis), Mr. Aashil Apurva Shah and Mr. Ansh Ashit Shah;
- Acquisition of 100% equity stake of Sharekhan Ltd. and Human Value Developers Pvt. Ltd. collectively by Mirae Asset Capital Markets (India) Pvt. Ltd. and Mirae Asset Securities Co. Ltd., respectively;
- Acquisition of 10.39% shareholding of Annapurna Finance Private Limited and subscription to its certain debentures by Piramal Alternatives Trust;
- Acquisition NFCL Assets and 100% shareholding of ZeroC by AMG India using proceeds of investments received from the AMG Entities, BSI, Gentari, and Platinum Rock;
- Acquisition of CCPS in Northern Arc Capital Limited (Northern Arc/Target) by the International Finance Corporation (IFC);
- Acquisition of shares of MG Motor India Private Limited by IndoEdge India Fund – LVF Scheme.



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