

Contents

High Courts

- Karnataka High Court upholds CCI's investigation against Amazon and Flipkart
- Gujarat High Court sets aside CCI's order granting interim relief to FabHotels and Treebo

Competition Commission of India

Enforcement

- CCI dismisses case against domestic airlines for alleged cartelisation
- CCI orders investigation against Baseball Federation for alleged anti-competitive practices
- CCI dismisses case against Volleyball Federation for alleged abuse of dominant position
- CCI finds Tamil and Telegu film producers associations guilty of indulging in anti-competitive practices
- CCI orders another investigation against Google for alleged anti-competitive practices
- CCI dismisses case against taxi unions in Goa for preventing entry of app-based taxi aggregators
- CCI dismisses complaint against National Stock Exchange for alleged abuse of dominant position

Merger Control

- CCI approves acquisition of majority shareholding of NESCO by Tata Power
- CCI approves acquisition of majority shareholding of Magma Fincorp by Rising Sun
- CCI approves acquisition of majority shareholding of Gangavaram Port by Adani Ports
- CCI approves acquisition of shareholding of DHFL and Pramerica Life Insurance by Piramal Group
- CCI approves acquisition of majority shareholding of Bigbasket by Tata Group

High Court

Karnataka High Court upholds CCI's investigation against Amazon and Flipkart

The Karnataka High Court (**KHC**) dismissed the writ petitions filed by Amazon Seller Services Private (**Amazon**) and Flipkart Internet Private Limited (**Flipkart**) challenging the order passed by the Competition Commission of India (**CCI**) ordering investigation against them for indulging in anti-competitive practices.

Brief Background

Delhi Vyapar Mahasangh filed a complaint before the CCI alleging that Flipkart and Amazon (collectively referred to as the '**Opposite Parties**') are *inter alia* indulging in anti-competitive practices by giving deep discounts and providing preferential listing to the products of their preferred sellers on their platforms which has foreclosed the market to non-preferred sellers. On [January 13, 2021](#), the CCI directed the Director General (**DG**) to investigate the conduct of the Opposite Parties (**Prima Facie Order**).

Aggrieved, the Opposite Parties filed writ petitions before the KHC challenging the Prima Facie Order primarily on the grounds that: (i) the CCI failed to issue a notice and did not grant them a hearing before passing the Prima Facie Order; and (ii) the Prima Facie Order is not reasoned and has been passed without application of mind.

KHC Observations

The KHC dismissed the writ petitions and *inter alia* held as follows:

- (i) a *prima facie* order passed by the CCI is an administrative direction to one of its departments i.e., the DG, and is passed without entering into any adjudicatory process. Placing reliance on the Supreme Court decision in *SAIL*¹, the KHC noted that under the scheme of the Competition Act, the CCI is not required to issue notice, or provide a hearing, to any party prior to forming its *prima facie* opinion.
- (ii) a High Court can only interfere and examine the decision-making process of a subordinate authority. However, it cannot convert itself into a court of appeal and examine the correctness of the decision of the subordinate authority. In the instant case, as the CCI has passed the Prima Facie Order after giving some reasoning, therefore, there is no requirement to interfere and scuttle the investigation.

(Source: KHC Order dated June 11, 2021)

¹ (2010) 10 SCC 744

Gujarat High Court sets aside CCI's order granting interim relief to FabHotels and Treebo

The Gujarat High Court (**GHC**) has set aside the interim order passed by the CCI directing Make My Trip India Private Limited and Ibibo Group Private Limited (collectively referred to as '**MMT-Go**') to relist Casa2 Stays Private Limited (**FabHotels**) and Rubtub Solutions Private Limited (**Treebo**) (together referred to as the '**Budget Hotels**') on its online portal.

Brief Background

In [2019](#) and [2020](#), the CCI ordered investigation against MMT-Go and Oravel Stays Private Limited (**OYO**) for indulging in various forms of anti-competitive practices including MMT-Go and OYO entering into an exclusive agreement whereby MMT-Go decided not to list the Budget Hotels on its platform which foreclosed the market to them.

On [March 9, 2021](#), pursuant to an interim application filed by the Budget Hotels, the CCI granted interim relief to them by directing MMT-Go to relist the Budget Hotels on its online portal pending investigation against MMT-Go and OYO (**CCI Interim Order**). However, the said order was passed without hearing OYO.

Aggrieved, OYO challenged the CCI Interim Order before the Single Judge of the GHC (**Single Judge**) primarily on the ground that it was a necessary party, and the CCI Interim Order was passed without hearing it, thereby violating the principles of natural justice and fair play. The Single Judge passed an interim order (**Single Judge Order**) staying the CCI Interim Order till the final disposal of the matter. Against the Single Judge Order, the Budget Hotels preferred an appeal before the Division Bench of the GHC (**Division Bench**).

GHC Observations

The Division Bench *inter alia* set aside the CCI Interim Order and directed the CCI to decide the applications for interim relief after affording due opportunity to OYO and pass an appropriate order in a time bound manner.

(Source: GHC Order dated June 14, 2021)

Competition Commission of India

Enforcement

CCI dismisses case against domestic airlines for alleged cartelisation

The CCI received a complaint against Jet Airways (India) Limited (**Jet Airways**), SpiceJet Limited (**Spice Jet**), InterGlobe Aviation Limited (**Indigo**), Go Airlines (India) Limited (**Go Air**) and Air India Limited (**Air India**) (Jet Airways, Spice Jet, Indigo, Go Air and Air India are collectively referred to as '**Airlines**') alleging that the Airlines cartelised by simultaneously increasing the air tickets prices for some sectors during Jat agitation in February 2016 (**Relevant Period**). The CCI referred the matter to the DG for investigation who concluded that the Airlines did not cartelise during the Relevant Period.²

The CCI agreed with the findings of the DG and *inter alia* noted that: (i) the sectors witnessed high demand for air tickets due to Jat agitation which led to non-availability of alternative modes of transport like rail, road etc. Therefore, the air tickets were sold at higher price.; (ii) there was no price parallelism or identical pricing of tickets by the Airlines for any of the sectors; (iii) there was no evidence of any form of communication among the Airlines to suggest any concerted action; and (iv) while the Airlines used algorithm which could be used for potential anti-competitive conduct, in the instant case, the algorithm software used by the Airlines were different from each other and the inputs for these algorithms were provided by the Airlines based on their historical data which varied across Airlines. Accordingly, the CCI dismissed the case.

(Source: CCI Order dated June 3, 2021)

CCI orders investigation against Baseball Federation for alleged anti-competitive practices

The CCI received a complaint from the Confederation of Professional Baseball Softball Clubs (**Complainant**)³ against Amateur Baseball Federation of India (**ABFI**)⁴ alleging that ABFI abused its dominant position by: (i) issuing communication dated January 7, 2021 (**Communication**) to its affiliated state baseball associations asking them not to deal with unrecognized bodies and not to allow state level players to participate in any of the events organized by them; and (ii) threatening to take strict action against the players who participate in such events (referred to as '**Alleged Conduct**').

ABFI challenged the jurisdiction of the CCI on the ground that it is not an 'enterprise' under the Competition Act. The CCI rejected the jurisdictional plea and noted that even non-commercial economic activities/philanthropic activities will be subject to the Competition Act as it does not distinguish economic activities based on commercial or non-commercial nature. Given that ABFI is *inter alia* involved in controlling baseball, therefore, ABFI is an 'enterprise' under the Competition Act.

² The DG excluded Jet Airways from the purview of this investigation due the on-going insolvency proceedings against it.

³ It is a not-for-profit organisation working to promote and develop baseball and softball in India.

⁴ It is a society, recognized as National Sports Federation by Ministry of Youth Affairs and Sports, Government of India and is primarily working for the general promotion of baseball and players. It is responsible for conducting zonal, national, and international baseball events in India.

The CCI defined the relevant market as the “*market for organization of baseball leagues/events/ tournaments in India*” and noted that ABFI, *prima facie*, is in a dominant position given its linkages/ affiliations with international baseball and softball organizations, and it plays a decisive role in the governance of baseball in India. On abuse of dominant position, the CCI *inter alia* noted that by indulging in the Alleged Conduct, ABFI is imposing an unfair condition and denying market access to other bodies/federations. The CCI also directed the DG to examine whether ABFI’s conduct in issuing the Communication results in limiting or controlling the provision of services under section 3(3) of the Competition Act.

Further, the CCI granted interim relief to the Complainant pursuant to an application filed by it: (i) restraining ABFI from issuing any communication to its affiliated state associations disallowing their players to participate in events organised by other bodies/federations; and (ii) directing ABFI not to threaten the players who want to participate in such events.

(Source: CCI Order dated June 3, 2021 and Interim Order dated June 3, 2021)

CCI dismisses case against Volleyball Federation for alleged abuse of dominant position

The CCI received a complaint against Volleyball Federation of India (VFI)⁵ and Baseline Ventures (India) Private Limited (Baseline)⁶ from volleyball players registered with VFI alleging that VFI abused its dominant position by *inter alia*: (i) appointing Baseline and granting it exclusive rights for organising volleyball league in India for 10 years pursuant to an agreement entered with it (Agreement); and (ii) restricting volleyball players from playing for other domestic and international volleyball leagues. The CCI referred the matter to the DG for investigation who concluded that VFI abused its dominant position.

VFI challenged the jurisdiction of the CCI on the ground that it is not an ‘enterprise’ under the Competition Act. The CCI rejected the jurisdictional plea and noted that: (i) VFI is a society registered under the Tamil Nadu Societies Registration Act, 1975, and is thus a ‘person’, and by extension an ‘enterprise’ defined under the Competition Act; and (ii) VFI has *inter alia* been established to organise national and international championships, which is a revenue generating activity, thereby making it an ‘enterprise’ under the Competition Act.

On dominance, the CCI agreed with the findings of the DG and *inter alia* noted that the VFI is in a dominant position as: (i) is the only National level volleyball federation in India affiliated to the sole international volleyball body, Fédération Internationale de Volleyball; (ii) is the *de facto* regulator and an exclusive body responsible for the conduct and governance of in India; and (iii) is the only body with regulatory powers and the right to carry out economic activities (like organising leagues).

On abuse of dominant position, the CCI disagreed with the DG’s findings and *inter alia* noted that neither there is evidence to show that VFI restricted the organisation of other volleyball leagues in India nor that they restricted the volleyball players from participating in leagues in India or abroad. Accordingly, the CCI dismissed the case against the parties.

⁵ It is a National Sports Federation for volleyball in India recognised by the Ministry of Youth Affairs & Sports, Government of India, FIVB and Indian Olympic Association. It is the exclusive holder of all the rights pertaining to volleyball including commercials associated with it.

⁶ It is *inter alia* engaged in providing consultancy services, arranging sponsorships, marketing brands and sports events, brand licensing, including providing consultancy for sports management, celebrity endorsements and management, *etc.*

(Source: CCI Order dated June 3, 2021)

CCI finds Tamil and Telegu film producers associations guilty of anti-competitive practices

The CCI found the Tamil Film Producers Council (TFPC)⁷ and Telegu Film Chamber of Commerce (TFCC)⁸ (collectively referred to as the ‘**Opposite Parties**’) guilty of anti-competitive practices.

The complainant *inter alia* alleged that the Opposite Parties: (i) collectively boycotted the production, supply, exhibition, distribution, and technical development of Tamil and Telegu films in Tamil Nadu; (ii) refused to deal with several stakeholders in Tamil Nadu’s film industry; and (iii) called for an indefinite industry wide strike and ban on the release of films in light of high virtual print fee (HVP) charged by digital service providers (DSPs)⁹.

The CCI referred the matter to the DG for investigation who concluded that the Opposite Parties indulged in anti-competitive practices by boycotting Tamil and Telegu films.

The CCI agreed with the findings of the DG and *inter-alia* noted that the Opposite Parties indulged in anti-competitive practices as: (i) TFPC issued boycott calls to Tamil film producers and even encouraged other associations to join the call for strike; and (ii) the Telegu film producers of TFCC took a collective decision to issue a call for strike and stop releasing films in Tamil Nadu. The CCI also noted that trade associations play an important role in promoting the interests of the members and industry they serve, however, since members are typically competitors, they must be sensitive to anti-trust risks involved in the participation in such associations.

Accordingly, the CCI directed the Opposite Parties and its office bearers to cease and desist from indulging in anti-competitive conduct but did not impose any monetary penalty considering the nature, duration, and level of participation in the strike.

(Source: CCI Order dated June 22, 2021)

CCI orders another investigation against Google for alleged anti-competitive practices

The CCI received a complaint against Google LLC¹⁰, Google India Private Limited¹¹ (Google LLC Google India Private Limited are collectively referred to as ‘**Google**’), Xiaomi Technology India Pvt. Ltd. (**Xiaomi**) and TCL India Holdings Pvt. Ltd. (TCL)¹² for indulging in various forms of anti-competitive practices.

The complainant *inter alia* alleged that Google, who licenses android TV Operating System (OS) to smart TV manufacturers, has imposed various restrictions on smart TV manufactures (**Manufacturers**) through two agreements (**Agreements**), including: (i) pre-installing Google’s PlayStore app on smart TVs; (ii) preventing Manufacturers from manufacturing and selling any TV which operates on a competing android TV operating

⁷ It is an association of film producers operating in Tamil Nadu with a membership of approximately 1500 Tamil film producers.

⁸ It is an association of Telegu film producers, exhibitors, studio artists and distributors with a membership of approximately 1729 producers, 660 distributors, 2068 exhibitors and 194 studio technicians.

⁹ They install a digital film server and projector in each theatre and operate the technology to convert/ digitise the film content into a proprietary format and deliver such digitised content to the servers in theatres for playback. They charge a fee for this service from the film producers.

¹⁰ It is a multinational technology company specializing in internet-related services and products. Majority of smart mobile and tablet manufacturers in India are using its android operating system.

¹¹ It is an Indian subsidiary of Google LLC.

¹² Xiaomi and TCL are leading manufacturers/sellers/distributors of smart TV devices in India.

system (referred to as ‘**Alleged Conduct**’).

The CCI defined the relevant markets as the “*market for licensable smart TV device operating systems in India*” and an associated “*relevant market for app store for Android smart TV OSs in India*”¹³ and found Google to be in a dominant position given its high market share and significant presence in the market for licensable smart TV device OSs in India.

On abuse of dominant position, the CCI *inter alia* noted that imposing unfair conditions on the Manufacturers results in: (i) reduced ability and incentive of the Manufacturers to develop and sell devices with competing android OS; (ii) denial of market access by preventing the Manufacturers from manufacturing and selling devices with competing android OS; (iii) imposing supplementary obligations on Manufacturers, having no connection with the subject of the Agreements; and (iv) leveraging its dominance in the Play Store market to protect its position in other relevant markets such as online video hosting services offered by YouTube, etc.

(Source: CCI Order dated June 22, 2021)

CCI dismisses case against taxi unions in Goa for preventing entry of app-based taxi aggregators

The CCI took *suo moto* cognisance of the alleged concerted action by tourist taxi unions operating in the State of Goa preventing the entry of app-based taxi aggregators like Ola and Uber, in contravention of Section 3(3)(b) of the Competition Act.

The CCI referred the matter to the DG for investigation who concluded that the South Goa Tourist Taxi Association¹⁴, North Goa Tourist Taxi Association¹⁵ and Centre for Responsible Tourism (together referred to as the ‘**Opposite Parties**’) prevented the entry of app-based taxi service providers in the State of Goa and thereby violated the provisions of the Competition Act.

The CCI disagreed with the DG findings and *inter-alia* noted that: (i) the DG’s findings were based on information in the public domain and uncorroborated material; (ii) the DG failed to note that taxi aggregator Uber has not even applied for a license to operate in the State of Goa and taxi aggregator Ola exited the market without any indication of the Opposite Parties’ involvement; and (iii) the DG failed to consider the guidelines issued by the State of Goa permitting the operation of app-based taxi aggregators like Ola and Uber in Goa despite the opposition from the taxi unions. Accordingly, the CCI dismissed the case.

(Source: Order dated June 22, 2021)

¹³ The *relevant market for app store for Android smart TV operating systems in India* was defined given the significant role played by app store to meet the dynamic needs of the consumer of a smart TV.

¹⁴ It is an association of taxi owners in South Goa district registered under Societies Registration Act, 1860.

¹⁵ It is an association of taxi owners in North Goa district registered under Societies Registration Act, 1860.

CCI dismisses complaint against National Stock Exchange for alleged abuse of dominant position

The CCI received a complaint against National Stock Exchange of India Limited (NSE) *inter-alia* alleging that NSE abused its dominant position by providing preference to some traders by providing co-location services¹⁶ for algorithmic trading.

NSE challenged the jurisdiction of the CCI primarily on the ground that the matter is presently pending before the Securities Appellate Tribunal (SAT) and given that SAT is already looking into the issue of co-location facility, there is no requirement for the CCI to intervene in terms of the *Bharti* judgment¹⁷. The CCI rejected the jurisdictional plea and *inter-alia* noted that: (i) similar facts can give rise to two different causes of actions under two different legislations and a mere pendency of an appeal in an alternate forum does not prevent the CCI from hearing the case; and (ii) information disclosing anti-competitive conduct filed before the CCI will not place an embargo on the CCI merely because the complainant has preferred proceedings before another forum.

On merits, the CCI defined the relevant market as the ‘*market for providing co-location services for algo-trading in securities to the trading members in the territory of India*’ and noted that NSE is in a dominant position since: (i) it is ranked among the top 3 exchanges in the world in various categories; (ii) it enjoys a market share of approximately 93 per cent in the cash equities segment, 100 per cent in the equity derivatives segment and 60 per cent in the currency derivatives segment; and (iii) it is the first stock exchange in India to introduce algorithmic trading.

On abuse of dominant position, the CCI *inter-alia* noted that:; (i) the sectoral regulator, i.e., Securities Exchange Board of India did not find violation of the relevant regulations governing co-location services by NSE; and (ii) CCI intervention to prevent the co-location facility (which has been in place since 2009 and offered by several major exchanges in the world) would be retrograde, in light of the importance of technology in all walks of life. Accordingly, the CCI dismissed the case.

(Source: CCI Order dated June 29, 2021)

Merger Control

CCI approves acquisition of majority shareholding of NESCO by Tata Power

The CCI approved acquisition of 51 per cent of equity share capital of North Eastern Electricity Supply Company of Odisha Limited (NESCO)¹⁸ by The Tata Power Company Limited (TPCL)¹⁹, a group company of the Tata group (referred to as the ‘**Proposed Transaction**’). The Proposed Transaction is pursuant to the competitive bidding process initiated by the Odisha Electricity Regulatory Commission under the relevant provisions of the Electricity Act, 2003 (**Electricity Act**).

The CCI noted that there are no horizontal overlaps between the activities of the parties, as NESCO distributes power in certain licensed areas of Odisha where the Tata group is not present.

¹⁶ Co-location is the practice of renting space for servers and other computing hardware at a third-party provider’s data centre facility. Co-location helps in faster movement of data.

¹⁷ CCI vs Bharti Airtel and Others (2019) 2 SCC 521

¹⁸ It is a wholly owned subsidiary of Grid Corporation of Odisha Limited, is engaged in the distribution and retail supply of power in five districts of Odisha namely, (i) Balasore; (ii) Bhadrak; (iii) Jajpur; (iv) Keonjhar; and (v) Baripada.

¹⁹ It is a public listed company, primarily engaged in power generation, transmission, and distribution in India, directly and through its subsidiaries.

Further, the CCI noted that there are no existing vertical or complementary links, however, there are potential vertical links between the activities of the parties as the Tata group is present in the upstream markets of: (i) power generation; and (ii) power transmission, and NESCO is present in the downstream market of power distribution, in India. However, given the insignificant presence of parties in these markets, the Proposed Transaction is not likely to raise foreclosure concerns.

JSA represented TPCL in the Proposed Transaction before the CCI.

(Source: Order dated March 19, 2021)

CCI approves acquisition of majority shareholding of Magma Fincorp by Rising Sun

The CCI approved (i) subscription of 64.68 per cent of the equity share capital of Magma Fincorp Limited (**Magma Fincorp**)²⁰; and (ii) acquisition of additional up to 26 per cent equity share capital of Magma Fincorp pursuant to the open offer, by Rising Sun Holdings Private Limited (**Rising Sun**)²¹, Mr. Sanjay Chamria and Mr. Mayank Poddar²² (referred to as the ‘**Proposed Transaction**’).

The CCI noted that there are horizontal overlaps between the activities of the parties in the: (i) broad market for provision of loans in India and in the narrow segment of provision of loans to Micro, Small and Medium Enterprises; and (ii) provision of human resource services and consultancy (collectively referred to as the ‘**Relevant Markets**’). However, given the insignificant presence of the parties and presence of several players in the in the Relevant Markets, the Proposed Transaction is not likely to raise competition concerns.

(Source: CCI Order dated April 12, 2021)

CCI approves acquisition of majority shareholding of Gangavaram Port by Adani Ports

The CCI approved acquisition of 89.6 per cent of the equity share capital of Gangavaram Port Limited (**GPL**)²³ by Adani Ports and Special Economic Zones Limited (**Adani**)²⁴ (referred to as the ‘**Proposed Transaction**’).

The CCI noted that there are horizontal overlaps between the activities of the parties as both Adani and GPL provide coal handling and dry bulk cargo services through their respective ports to the customers located in the overlapping regions of North-Odisha, North-Chhattisgarh, and South-Jharkhand (together referred to as ‘**Overlapping Regions**’). However, given that the: (i) volume of cargo handled by the parties is insignificant; and (ii) there are other ports located at Paradip, Haldia, Vishakhapatnam and Gopalpur which are close to the Overlapping Regions, the Proposed Transaction is not likely to raise competition concerns.

Further, the CCI noted that there is an existing vertical relationship between the activities of the parties in the upstream market for provision of: (i) trading activities; (ii) logistics; and (iii) dredging and reclamation services

²⁰ It is a non-deposit taking non-banking finance company providing financial products *inter alia* commercial finance and general insurance services. Through its subsidiaries, it is also engaged in providing housing finance and making investments.

²¹ It is a part of Mr Adar Poonawalla’s Rising Sun group of companies and is engaged in making investments, leasing property and information sharing / business.

²² Mr. Sanjay Chamria is Vice Chairman and Managing Director, and Mr. Mayank Poddar is Chairman Emeritus and Non-Executive Director of Magma Fincorp.

²³ It provides cargo handling and marine services, *inter alia* pilotage, transporting by rail and road, and storing.

²⁴ It is a private sector port operator, with presence in six maritime states in India viz. Gujarat, Goa, Kerala, Andhra Pradesh, Tamil Nadu, and Odisha through 10 ports. It *inter alia* provides the following services through the said ports; (i) full marine services; (ii) cargo handling services; and (iii) value added services such as bagging and packaging.

provided by Adani, and downstream market for provision of port related services provided by GPL. However, given the insignificant presence of the parties and presence of several players, the same is not likely to raise foreclosure concerns.

(Source: CCI Order dated April 12, 2021)

CCI approves acquisition of DHFL and Pramerica Life Insurance by Piramal Group

The CCI approved acquisition of Dewan Housing Finance Limited (**DHFL**)²⁵ and Pramerica Life Insurance Limited (**PLIL**)²⁶ by Piramal Capital and Housing Finance Limited (**PCHFL**)²⁷, a wholly owned subsidiary of Piramal Enterprises Limited (**Piramal Group**) under the Insolvency and Bankruptcy Code, 2016 (referred to as the '**Proposed Transaction**').

The CCI noted that there are horizontal overlaps between the activities of the parties in the broad markets of: (i) loans and lending services (**Loans Market**); and (ii) provision of life insurance services in India. Within the Loans Market, there are horizontal overlaps between the activities of the parties in the narrow segments of: (i) retail loans that can be further sub-segmented into: (a) housing loans; (b) loans against property; and (c) loans to small and medium enterprises; and (ii) wholesale loans that can be further sub-segmented into project finance / commercial real estate financing; and corporate loans. However, given the combined market share of the parties is less than 5 per cent in most markets with insignificant incremental market share and presence of several players, the Proposed Transaction is not likely to raise concerns.

Further, the CCI noted that there are potential vertical links between the activities of the parties, since: (i) the Piramal Group is present in the upstream market for providing asset reconstruction services, and DHFL is present in the downstream market for loans /lending services; and (ii) the Piramal Group is present in the upstream market for providing insurance services, and DHFL is present in the downstream market for distribution and solicitation of life and general insurance products. However, given the insignificant presence of parties and presence of several players in these markets, the Proposed Transaction is not likely to raise foreclosure concerns.

(Source: CCI Order dated April 12, 2021)

CCI approves acquisition of majority shareholding of Bigbasket by Tata Group

The CCI approved acquisition of: (i) upto 64.3 per cent of equity share capital of Supermarket Grocery Supplies Private Ltd. (**SGS**)²⁸ by Tata Digital Limited (**TDL**)²⁹, a group company of Tata group³⁰; and (ii) sole control

²⁵ It is a deposit taking undertaking non-banking financial company.

²⁶ It is a joint venture company of DHFL Investments Limited, a subsidiary of DHFL, and Prudential International Insurance Holdings Limited. It provides a range of life insurance solutions for individuals and groups.

²⁷ It is a wholly owned subsidiary of Piramal Enterprises Limited. It provides wholesale and retail funding.

²⁸ It is engaged in online B2B sales of Relevant Products in India through business bigbasket.com. It owns the domain registration for the website named "bigbasket.com" and the brand name "bigbasket".

²⁹ It is engaged in the business of providing technology services related to identity & access management, loyalty program, offers and payments. It proposes to enable a common technology platform that would provide various products and services of various Tata brands and select non-Tata brands.

³⁰ It is engaged in multiple businesses ranging from IT services, steel manufacturing, automotive, power, consumer products, retail, aviation, infrastructure & real estate, defence, hospitality, DTH, NBFC, insurance etc. Through its group entities, it is engaged, *inter alia*, in the business of: (i) B2B sale of Relevant Products in India; (ii) B2C sale of Relevant Products in India; and (iii) manufacturing and sale of certain packaged food and grocery products in India.

over Innovative Retail Concepts Private Limited (**IRC**)³¹ by SGS (collectively referred to as the ‘**Proposed Transaction**’).

The CCI noted that there are horizontal overlaps between the activities of the parties in relation to the business to business (**B2B**) market, specifically in the: (i) B2B sales of food and grocery (**F&G**), household products and personal and beauty care products (**Relevant Products**) on a pan-India level; (ii) B2B sales of each of the Relevant Products on pan -India level and each of the overlapping cities in which both Tata group and SGS are present i.e., Mumbai, Pune and Surat; (iii) Organized B2B sales of Relevant Products on a pan-India level (collectively referred to as ‘**Relevant B2B Market**’). Additionally, the CCI noted that there are horizontal overlaps in relation to business to consumer (**B2C**) market, specifically in the: (i) B2C sales of Relevant Products on a pan-India level; (ii) Organized B2C sales of Relevant Products in Bengaluru, Hyderabad, Ahmedabad, Surat, Mumbai and Pune (collectively referred to as the ‘**Overlapping Cities**’); (iii) Organized B2C sales for each of the Relevant Products on a pan-India level and each of the Overlapping Cities; (iv) Online B2C sales of Relevant Products on a pan-India level and in Mumbai, Pune and Bangalore; and (v) Online B2C sales for each of the Relevant Products, on a pan-India level and in Mumbai, Pune and Bangalore (collectively referred to as ‘**Relevant B2C Market**’). However, given that the combined market shares of the parties are low with insignificant incremental market shares and presence of several players in each of the Relevant B2B Market and Relevant B2C Market, the Proposed Transaction is not likely to raise competition concerns.

Further, the CCI noted that there is an existing vertical relationship between the activities of the parties in the upstream market for provisions of: (i) manufacture and sale of food and grocery products by Tata group entities; and (ii) market for B2B sales where SGS is present. Further, there is a potential vertical link as parties propose to enter in a business arrangement whereby Tata Group will provide identity & access management and digital payment services in relation to Relevant Products sold by IRC through B2C channel in India. However, given the insignificant presence of the parties and presence of several players, the same is not likely to raise foreclosure concerns.

(Source: CCI Order dated April 28, 2021)

For more details, please contact km@jsalaw.com

³¹ It is engaged in online B2C sales of the Relevant Products in India and operates the website www.bigbasket.com and related mobile applications. The brand “bigbasket” and the domain name www.bigbasket.com have been licensed to IRC by SGS.



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