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# Competition Commission of India

## Enforcement

### CCI dismisses case against Quality Council of India for alleged abuse of dominant position

The Competition Commission of India (CCI) received a complaint against Quality Council of India (QCI), the parent body of National Accreditation Board for Testing and Calibration Laboratory (NABL)<sup>1</sup> *inter alia* alleging that QCI abused its dominant position by: (i) compelling laboratories to participate in NABL accredited Proficiency Testing (PT) programme if a laboratory seeks accreditation from NABL; (ii) compelling laboratories to get their equipment/machines calibrated only from NABL accredited laboratories; (iii) prescribing eligibility/qualification criteria of employees in the laboratory.

QCI submitted that it is not an 'enterprise' for the purposes of the Competition Act, 2002 (**Competition Act**). The CCI rejected the contention and noted that QCI is an enterprise given that it is involved in economic activities as it charges application fee for providing accreditation services which varies for different laboratories.

The CCI defined the relevant market as the '*market for providing service of granting accreditation certification to the laboratories after verifying the standards followed by them*' and noted that NABL is in a dominant position since only a miniscule number of laboratories in India have been accredited by entities other than NABL.

On abuse of dominant position, the CCI *inter alia* noted that: (i) participation in the PT program is mandatory as per the new applicable international standard, however, there is no mandatory requirement imposed by QCI to participate in the PT program only through NABL; (ii) calibration of equipment is mandatory, however, it can be done by any laboratory and not necessarily a laboratory accredited by NABL; and (iii) NABL prescribes minimum standards which are in the interest of public health, safety environment and welfare and support regulators and end users to give confidence in the operation of laboratories and can generate valid results.

Accordingly, the CCI dismissed the case.

(Source: CCI Order dated July 5, 2021)

### CCI dismisses case against Uber for alleged anti-competitive practices

In 2015, the CCI received a complaint from Meru Travel Solutions Private Limited (**Meru**)<sup>2</sup> against Uber India Systems Private Limited, Uber BV, Uber International Holding BV, Uber International BV, and Uber Technologies Inc. (collectively referred to as '**Uber**')<sup>3</sup> for alleged anti-competitive practices.

Meru *inter alia* alleged that Uber, being a dominant player in the *market for radio taxi services in Delhi-NCR* is abusing its dominant position by: (i) offering huge discounts to the customers leading to predatory pricing to oust its competitors; and (ii) entering into exclusivity contracts with its driver partners, restraining them from working with any other competing radio taxi operators.

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<sup>1</sup> It is established with the objective to provide government, industry associations and industry in general a scheme for third party assessment of quality and technical competence of testing and calibration laboratories.

<sup>2</sup> It is engaged in the radio taxi service business in India through its wholly owned subsidiaries under the brand names 'Meru', 'Meru Genie' and 'Meru Flexi' in 21 major cities across India including Delhi NCR.

<sup>3</sup> Uber entered the Indian radio taxi services market in 2013 and started its operations in Delhi NCR in December 2013, offering three different brands namely 'Uber Black', 'Uber X' and 'UberGo'.

On February 10, 2016, the [CCI](#) dismissed the case against Uber (**CCI Order**). Meru challenged the CCI Order before the erstwhile Competition Appellate Tribunal (**COMPAT**) which ordered the Director General (**DG**) to investigate Uber's conduct (**COMPAT Order**).<sup>4</sup>

The DG defined the relevant market as the '*market for radio taxi services in Delhi-NCR*' (**Relevant Market**) and noted that the Relevant Market is competitive with fluctuating market shares of Uber and ANI Technologies Private Limited (**Ola**). Based on other factors such as Ola and Uber being close competitors and significant competitive constraint on Uber posed by Ola in the Relevant Market, the DG noted that Uber is not a dominant player. Accordingly, in the absence of dominance, Uber cannot be said to abuse its dominant position.

The CCI agreed with the findings of the DG and *inter alia* noted that the aggressive pricing strategy adopted by Uber i.e., discounts and incentives to riders and drivers respectively, was to compete for the market and build its network just as its nearest competitor, Ola did. The discounts are a penetrative pricing strategy adopted by Uber to induce drivers and create a network since it does not have a fixed fleet of drivers like Meru's asset-based model.

On exclusive contracts, the CCI noted that unlike players operating under the asset-owned model like Meru, the pure cab aggregators like Uber do not have fixed fleet of cabs or drivers working for them. To create a fleet of cabs that attach themselves on the platform simulating a fleet model, these incentives in the early stages are essential to attract cab-owning drivers. Given that a cab aggregator competes in the Relevant Market on the network, and its operational efficiency is directly proportional to the network strength it has, it may be counterproductive for an antitrust regulator to intervene in such an instance. Accordingly, the CCI dismissed the case.

*(Source: CCI Order dated July 14, 2021)*

## Merger Control

### CCI approves acquisition of Yes Mutual Fund by White Oak Group

The CCI approved the acquisition of 100 per cent of the equity share capital of Yes Asset Management (India) Limited (**Yes AMC**)<sup>5</sup> and Yes Trustee Limited (**Yes Trustee**)<sup>6</sup> and indirect acquisition of Yes Mutual Fund by the White Oak Group<sup>7</sup> (referred to as the '**Proposed Transaction**'). Yes AMC and Yes Trustee are collectively referred to as the '**Targets**'.

The CCI noted that there are no horizontal, vertical, or complementary overlaps or links between the activities of the parties. However, there are: (i) potential vertical links as the Targets are present in the upstream market for the supply of mutual funds in India and White Oak Group is present in the downstream market for the distribution of mutual funds in India; and (ii) potential complementary links as White Oak Group is engaged in providing discretionary portfolio management services in India and Yes Mutual Fund is engaged in the market for mutual funds in India. However, given the insignificant presence of parties in these markets, the Proposed Transaction is not likely to raise foreclosure concerns.

*(Source: CCI Order dated May 17, 2021)*

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<sup>4</sup> Appeal No. 31 of 2016, Order dated December 7, 2016.

<sup>5</sup> It is the investment manager for Yes Mutual Fund.

<sup>6</sup> It is engaged in providing trusteeship services to Yes Mutual Fund.

<sup>7</sup> It is an investment advisory group. It is the sponsor and investment manager to three alternate investment funds in India.

## CCI approves acquisition of majority shareholding of Odisha electricity distribution companies by Tata Power

The CCI approved acquisition of 51 per cent of equity share capital of: (i) Western Electricity Supply Company of Odisha Limited (**WESCO**); (ii) Southern Electricity Supply Company of Odisha Limited (**SOUTHCO**); and (iii) Central Electricity Supply Company of Odisha Limited (**CESU**) (together referred to as the ‘**DISCOMS**’)<sup>8</sup> by The Tata Power Company Limited (**TPCL**)<sup>9</sup>, belonging to Tata group (referred to as the ‘**Proposed Transactions**’). The Proposed Transactions were pursuant to bidding processes 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 the DISCOMS distribute power in certain licensed areas of Odisha where the Tata group is not present. 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 the DISCOMS are present in the downstream market of power distribution, in India. However, given the insignificant presence of parties in these markets, the Proposed Transactions are not likely to raise foreclosure concerns.

JSA represented TPCL in the Proposed Transactions before the CCI.

*(Source: Orders dated June 7, 2021 (Order 1, Order 2, Order 3))*

## CCI approves acquisition of majority shareholding of Kamachi Industries by Suryadev Alloys and Power

The CCI approved the acquisition of majority equity share capital and control of Kamachi Industries Limited<sup>10</sup> by Suryadev Alloys and Power Limited<sup>11</sup> (referred to as the ‘**Proposed Transaction**’).

The CCI noted that there are horizontal overlaps between the activities of the parties in the markets for manufacture and sale of: (i) TMT bars; and (ii) steel billets in India. However, given the: (i) insignificant combined market share of the parties in the said markets; and (ii) presence of several players, the Proposed Transaction is not likely to raise competition concerns.

Further, the CCI noted that there is a potential vertical link between the activities of the parties in the upstream market for manufacture and sale of sponge iron (pig iron) in India and downstream market for manufacture and sale of steel billets in India. However, given the insignificant presence of the parties in these markets, the Proposed Transaction is not likely to raise foreclosure concerns.

*(Source: CCI Order dated June 17, 2021)*

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<sup>8</sup> They are wholly owned subsidiary of Grid Corporation of Odisha Limited, engaged in the distribution and retail supply of power in separate districts of Odisha.

<sup>9</sup> It is a public listed company, primarily engaged in power generation, transmission, and distribution in India, directly and through its subsidiaries.

<sup>10</sup> It is engaged in the production and sale of sponge iron, steel billets and long steel products, and operates a thermal power plant for captive and group captive consumption.

<sup>11</sup> It is engaged in the production of steel products like steel billets and TMT bars.

## CCI approves acquisition of minority shareholding of Magma HDI General Insurance by India Advantage Fund, Dynamic India Fund and Morgan Stanley

The CCI approved the acquisition of: (i) less than 25 per cent of equity share capital of Magma HDI General Insurance Company Limited (**Magma**)<sup>12</sup> by India Advantage Fund S4 I<sup>13</sup> and Dynamic India Fund S4 US I<sup>14</sup>; and (ii) less than 10 per cent of equity share capital of Magma by Morgan Stanley<sup>15</sup>(referred to as the ‘**Proposed Transaction**’).

The CCI noted that there are no horizontal, vertical, or complementary overlaps between the parties. However, there is a potential vertical link between Magma and Morgan Stanley group (through its portfolio companies) in the: (i) upstream market for provision of general insurance in India; and (ii) downstream market for the distribution of insurance in India. However, given the insignificant presence of the parties and presence of several players in these markets, the same is not likely to raise foreclosure concerns.

(Source: CCI Order dated June 17, 2021)

## CCI approves the demerger of certain undertakings of Dhampur Sugar Mills to Dhampur Bio Organics under Green Channel

The CCI approved the demerger of certain undertakings of Dhampur Sugar Mills Limited<sup>16</sup> to Dhampur Bio Organics Limited<sup>17</sup> (referred to as the ‘**Proposed Transaction**’). The parties notified the Proposed Transaction under the Green Channel Route (**GCR**) as there were no horizontal, vertical, or complementary overlaps between the activities of the parties in India.

(Source: Summary)

## CCI approves acquisition of minority shareholding of JSW Cement by Synergy Metals under Green Channel

The CCI approved the acquisition of minority shareholding of JSW Cement Limited<sup>18</sup> by Synergy Metals Investments Holding Limited<sup>19</sup> (referred to as the ‘**Proposed Transaction**’). The parties notified the Proposed Transaction under the GCR as there were no horizontal, vertical, or complementary overlaps between the activities of the parties in India.

(Source: Summary)

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<sup>12</sup> It is a general insurance company incorporated in India engaged in non-life/general insurance business in India including motor, health, personal accident, home, fire, engineering, etc.

<sup>13</sup> It is an alternative investment fund engaged in investment activities.

<sup>14</sup> It is a pooling vehicle for investments in India.

<sup>15</sup> It is a financial holding company *inter alia* engaged in institutional securities, wealth management and investment management.

<sup>16</sup> It has manufacturing facilities of sugar, power, industrial alcohol, ethanol, chemicals, and potable alcohol with different capacities in the State of Uttar Pradesh.

<sup>17</sup> It is a subsidiary of Dhampur Sugar Mills Limited. It is yet to commence operations.

<sup>18</sup> It is engaged in the business of: (i) production, manufacturing and trading of cement, clinker, ground granulated blast-furnace slag, slag sand and related products; (ii) mining, crushing, and grinding of raw materials and all other processes to finally produce and manufacture cement; (iii) road transportation services; and (iv) purchase of land/immovable properties to erect houses/building, etc.

<sup>19</sup> It is the investment fund of Synergy Metals and Mining Fund I LP which *inter alia* invests in the industrials, metals, and power sectors globally.

## Miscellaneous

### Cabinet Approves Memorandum on Cooperation between CCI and Japan Fair Trade Commission

The Union Cabinet approved the memorandum on cooperation between the CCI and the Japan Fair Trade Commission (JFTC) to promote and strengthen cooperation in competition law and policy, through exchange of information, technical cooperation, experience sharing and enforcement cooperation. It will enable the CCI to learn from the JFTC's experiences which will improve efficiency, improve enforcement of the Competition Act, benefit consumers and promote equity and inclusiveness.

*(Source: PIB Press Release)*

For more details, please contact [km@jsalaw.com](mailto:km@jsalaw.com)

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