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## Enforcement

### CCI finds Odisha State Civil Supplies Corporation guilty of abusing dominant position

The Competition Commission of India (CCI) found Odisha State Civil Supplies Corporation Limited (OSCS Corporation) guilty of abusing dominant position under Section 4 of the Competition Act, 2002 (Competition Act). OSCS Corporation is engaged in custom milling<sup>1</sup> for government agencies and is the largest agency involved in paddy procurement in the State of Odisha, such that all rice mills in the State of Odisha are completely dependent on it to run their mills.

The complainant<sup>2</sup> *inter alia* alleged that OSCS Corporation abused its dominant position by: (i) withholding dues owed to the complainant in relation to custom milled rice; (ii) arbitrarily disclosing the criteria for selection of custom millers for participation in Rabi season; (iii) threatening custom millers not to pay their maintenance charges unless they execute the agreement for the next year; (iv) not reimbursing the charge incurred by millers for last several years; and (v) unilaterally reducing the rates of some services.

The CCI referred the matter to the Director General (DG) for investigation, who concluded that OSCS Corporation is dominant in the ‘*market for procurement of custom milling services for rice in the State of Odisha*’ (Relevant Market). The DG *inter alia* noted that the conduct of OSCS Corporation by: (i) arbitrarily disclosing and modifying the selection criteria of custom millers for participation in Rabi season; (ii) coercing the custom millers to sign the agreement for subsequent year under pretext of withholding maintenance charges; and (iii) deliberately delaying settlement of dues of custom millers with an objective to save interest on the outgoing amount, amounted to abuse of dominant position.

The CCI agreed with the DG’s findings and observed that OSCS Corporation is dominant in the Relevant Market given its market share, unparalleled size, vast resources, and the substantial dependence of millers on it for their milling activity in the State of Odisha. Further, the CCI noted that the forceful signing of agreement for subsequent year and unfairly withholding dues of the custom millers amounts to abuse of dominant position under Section 4 of the Competition Act.

Accordingly, the CCI directed OSCS Corporation to cease and desist from indulging in abusive conduct but refrained from imposing any penalty.

(Source: CCI Order dated August 05, 2021)

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<sup>1</sup> Rice millers procure paddy from government on job work called custom milling and after milling they supply rice to the government.

<sup>2</sup> It is in the business of rice (paddy) milling, production of rice, broken rice, bran, etc., and sale, and acted as custom milling agent for OSCS Corporation.

## CCI finds Grasim Industries guilty of abusing dominant position

The CCI found Grasim Industries Limited (**Grasim**) guilty of abusing dominant position in the market for supply of viscose staple fibre (**VSF**) to spinners. The complainants were spinners who manufacture fibre by using VSF which was supplied to them by Grasim. They *inter alia* alleged that Grasim: (i) discriminated between similarly placed customers (spinners) basis domestic and export segment; (ii) sought production details from millers before deciding on the discount rate applicable to them; and (iii) had stopped supply of VSF to one of the complainants.

The CCI referred the matter to the DG for investigation who concluded that Grasim was dominant in the ‘*market for supply of VSF to spinners in India*’ (**Relevant Market**) and abused its dominant position by charging discriminatory prices from its customers and imposing supplementary obligations on them, in contravention of Section 4 the Competition Act.

The CCI agreed with the DG’s findings and *inter alia* noted that Grasim’s conduct had the ability to not only distort downstream markets but also have an adverse effect on production efficiency of downstream firms (spinners). Further, the discriminatory practice created information asymmetry which adversely affected the ability of the spinners to supply yarn at competitive prices.

Accordingly, the CCI directed Grasim to cease and desist from indulging in abusive conduct. However, no monetary penalty was imposed given that CCI had imposed penalty on Grasim for similar conduct in a [separate case](#).

(Source: CCI Order dated August 06, 2021)

## CCI finds Maruti Suzuki guilty of indulging in resale price maintenance

The CCI received an anonymous e-mail from one of the dealers of Maruti Suzuki India Limited (**MSIL**) alleging that MSIL implemented a “discount control policy” (**DCP**), across its dealerships wherein it prevented its dealers from offering discounts beyond what MSIL prescribed, in contravention of Section 3(4) of the Competition Act, which deals with vertical restraint.

The CCI after forming a [prima facie view](#), referred the matter to the DG for investigation who concluded that MSIL implemented a DCP, across its dealerships, which restricted dealers from offering a discount which was more than what was prescribed by MSIL. Further, it appointed a Mystery Shopping Agencies (**MSA**), to track discounts offered by the dealers. The MSAs would pose as customers before dealerships, to check whether extra discounts were being offered. If offered, would penalize the dealership along with its personnel. Accordingly, it noted that MSIL indulged in resale price maintenance (**RPM**) in contravention of Section 3(4) of the Competition Act.

The CCI agreed with the DG’s findings and *inter alia* noted that the DCP resulted in: (i) the denial of benefits to consumers, which would have otherwise been accrued to them in a healthy competitive environment between dealers; and (ii) creation of barriers to new entrants in the market as the new dealers would take into consideration restrictions on their ability to compete with respect to prices in the intra-brand competition of MSIL brand of cars. Further, the imposition of RPM by MSIL being a market leader (with 50% market share) also impacts inter-brand competition as competing car manufacturers can monitor prices more easily and factor it into their pricing strategy. The softening of intra-brand and inter-brand competition leads to consumers paying higher prices for products/services.

Accordingly, the CCI, while considering the impact of COVID on automobile sector, took a lenient view and imposed a penalty of INR 200 (USD 27 million) crore on MSIL and directed it to cease and desist from indulging in anti-competitive conduct. This is the second penalty imposed by the CCI for RPM. In June 2017, the CCI imposed a penalty of INR 87 crores (USD 13.5 million) on Hyundai Motors for indulging in RPM.

*(Source: CCI Order dated August 23, 2021)*

## Merger Control

### CCI approves acquisition of majority shareholding of Mphasis by Blackstone, GIC and AIDIA

The CCI approved acquisition of up to 75 per cent of the equity share capital of Mphasis Limited (**Mphasis**)<sup>3</sup> by Blackstone, GIC and Abu Dhabi Investment Authority (collectively as '**Acquirers**') (referred to as the '**Proposed Transaction**').

The CCI noted that there are horizontal overlaps between the activities of the portfolio companies of Acquirers and Mphasis in the: (i) broad market for information technology (**IT**) and IT-enabled services (**ITES**) (**Broad Market**); and (ii) narrow markets for provision of: (a) business process outsourcing services; (b) IT outsourcing services; (c) consulting service; and (d) implementation services (collectively referred to as '**Narrow Markets**'). However, given the insignificant market shares of the parties in the Broad Market and Narrow Markets with presence of several significant players, the CCI noted that the Proposed Transaction is not likely to raise competition concerns.

*(Source: CCI Order dated June 7, 2021)*

### CCI approves acquisition of majority shareholding of Aakash Educational Services by Byju's

The CCI approved: (i) acquisition of approximately 70 per cent of the equity share capital of Aakash Educational Services Limited (**AESL**)<sup>4</sup> by Think & Learn Private Limited (**Byju's**)<sup>5</sup>; and (ii) merger of AESL with and into Byju's (collectively referred to as the '**Proposed Transaction**').

The CCI noted that there are horizontal overlaps between the activities of the parties in the broad market for non-formal education in India; and narrow markets of test preparatory coaching services for: (a) medical examinations; (b) engineering examinations; (c) schools (collectively referred to as '**Relevant Markets**'). However, given the insignificant market share of the parties in the Relevant Markets with presence of several significant players, the CCI noted that the Proposed Transaction is not likely to raise competition concerns.

*(Source: CCI Order dated June 7, 2021)*

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<sup>3</sup> It is a global IT service provider, *inter alia* specializing in providing cloud and cognitive services.

<sup>4</sup> It provides curriculum-based coaching for K-12 students and test preparatory services for various competitive examinations. It offers its services through multiple modes such as classroom-based coaching, online learning, distance learning and hybrid learning programmes.

<sup>5</sup> It is a technology based (online) education platform for primary and secondary school subjects, overseas and domestic test preparatory coaching services for entrance examinations for engineering, medical, etc.

## CCI approves acquisition of additional shareholding of United Breweries by Heineken

The CCI approved the acquisition of up to 16.4 per cent of additional equity share capital of United Breweries Limited (UBL)<sup>6</sup> by Heineken Group<sup>7</sup> and/or sole control of UBL by Heineken Group, subject to certain scenarios (referred to as the ‘**Proposed Transaction**’).

The CCI noted that the Proposed Transaction will lead to change in control from existing joint control of Vijay Mallya group and Heineken Group to sole control of Heineken Group, over UBL and in such cases, the extent to which the parties competed prior to change in control is primarily considered relevant for competition assessment.

While doing the competition assessment, the CCI noted the Heineken Group is primarily selling its beers in India through UBL and does not directly manufacture and sell beer in India, which implies a lack of direct and independent presence of the Heineken Group in India. Accordingly, the Proposed Transaction is not likely to alter the competition dynamics in any relevant market. Only in duty-free segment, Heineken Group has direct and independent presence in India. However, the extent of presence of the Heineken Group in this segment is insignificant to cause any change in competition dynamics.

Further, with respect to vertical relationship between the parties, the CCI noted that the Proposed Transaction is unlikely to cause any foreclosure concerns resulting from change in control of UBL given that UBL does not have any arrangement(s) to manufacture or sell beer with any other domestic or international beer companies, apart from Heineken Group in India.

*(Source: CCI Order dated June 21, 2021)*

## CCI approves acquisition of the fertilizer plant of Zuari Agro Chemicals by Paradeep Phosphates

The CCI approved the acquisition of the non-urea fertilizer plant<sup>8</sup> and business of development and manufacture of urea and non-urea fertilizer products (**Target Business**) of Zuari Agro Chemicals Limited (**Zuari**)<sup>9</sup> by Paradeep Phosphates Limited (**PPL**)<sup>10</sup> (referred to as the ‘**Proposed Transaction**’).

The CCI noted that there are horizontal overlaps between the activities of PPL and the Target Business in the: (i) broad market of fertilisers and (ii) narrow markets of non-urea fertilisers which can be further sub-segmented into: (a) Di-ammonium phosphate (**DAP**); (b) Muriate of Potash (**MoP**); and (c) Nitrogen-phosphorus-potassium (**NPK**) (collectively referred to as ‘**Relevant Markets**’). However, given the low market shares of the parties in the Relevant Markets with presence of several significant players, the CCI noted that the Proposed Transaction is not likely to raise competition concerns.

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<sup>6</sup> It is a joint venture between the Heineken group and the Vijay Mallya group, engaged in the manufacture, distribution and sale of beer in India. Heineken group holds 46.53 per cent in UBL.

<sup>7</sup> It is engaged in the production, manufacture, packaging, distribution, marketing and sale of beer, non-alcoholic beer, cider and cider-based beverages, and a range of other beverages.

<sup>8</sup> The non-urea fertilizer plant at Zuarinagar, Goa comprises four facilities manufacturing Ammonia, Urea, and Nitrogen-phosphorus-potassium, respectively used for manufacturing Urea and NPK fertilizers.

<sup>9</sup> It is engaged in the production of complex fertilizers and other agricultural inputs such as micronutrients and specialty fertilizers.

<sup>10</sup> It is engaged in the manufacture and sale of non-urea / complex fertilizers, namely, DAP and Nitrogen-phosphorus-potassium fertilizers. It is owned by the Government of India and Zuari Maroc Phosphates Private Limited (**ZMPL**). ZMPL is a joint venture between Zuari and OCP S.A., an entity owned by the Government of Morocco.

Further, the CCI noted that there are potential vertical links between the activities of PPL and Target Business since OCP S.A. (**OCP**)<sup>11</sup> is engaged in the supply of rock phosphate, phosphoric acid and DAP to India which is used by the Target Business. However, given that the: (i) Target Business does not consume rock phosphate; (ii) phosphoric acid supplied by OCP to Zuari forms a very small part of OCP's total supplies made to India; and (iii) the insignificant demand of phosphoric acid and DAP by the Target Business, the Proposed Transaction is not likely to raise foreclosure concerns.

(Source: CCI order dated June 24, 2021)

### **CCI approves acquisition of S.B. Energy by Adani Green Energy**

The CCI approved the acquisition of S.B. Energy Holding Ltd (**S.B. Energy**), a company belonging to Softbank group<sup>12</sup> by Adani Green Energy Ltd (**Adani**)<sup>13</sup> (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 of power generation; and (ii) narrower market of power generation from renewable sources in India (collectively referred to as '**Relevant Markets**'). The CCI noted that the combined market share of the parties is insignificant with low incremental market share based on installed capacity. In terms of capacities auctioned<sup>14</sup>, the CCI noted that while Adani is a significant player when considering the renewable power generation capacity as it has won the highest share in capacities auctioned, however, the increment in terms of bids won by SB Energy is insignificant. Accordingly, the Proposed Transaction is not likely to raise competition concerns.

Further, the CCI noted that there are existing vertical relationships and potential vertical links between the activities of the parties. However, given the specificities of the power generation sector and the insignificant presence of the parties in the power sector supply chain, the Proposed Transaction is not likely to raise foreclosure concerns.

(Source: CCI order dated June 30, 2021)

### **CCI approves acquisition of minority shareholding of Bundl (Swiggy) by Softbank**

The CCI approved acquisition of 8.37 per cent of the equity share capital of Bundl Technologies Private Limited (**Bundl**)<sup>15</sup> operating under the brand name "Swiggy" by Softbank group (referred to as the '**Proposed Transaction**').

The CCI noted that there are horizontal overlaps between the activities of the portfolio companies of Softbank group and Bundl in the market for: (i) retail sale of groceries and daily essentials<sup>16</sup>; (ii) organised food services<sup>17</sup>;

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<sup>11</sup> *Ibid.*

<sup>12</sup> It is engaged in the generation, supply and sale of electricity and energy produced from renewable sources in India.

<sup>13</sup> It is a part of Adani group and is engaged in the business of: (i) power generation through solar energy, wind energy and hybrid energy and (ii) the development of solar parks.

<sup>14</sup> In terms of the capacities won by the parties out of the total renewable energy capacities auctioned in FY 2020-21 by way of a bidding process.

<sup>15</sup> It is engaged in providing hyperlocal on-demand food delivery services in India through its brand "Swiggy".

<sup>16</sup> Broad market for retail sale of groceries and daily essentials in India and the narrow relevant market for the retail sale of groceries and daily essentials in each of the cities where Bundl has presence.

<sup>17</sup> Broad market for provision of organised food services in India and narrow relevant market for the provision of organised food services in each Indian city in which the parties have operations.

and (iii) food packaging material<sup>18</sup> (collectively referred to as ‘**Relevant Markets**’). However, given the insignificant presence of the parties in the Relevant Markets with presence of several players in each of the Relevant Markets, the CCI noted that the Proposed Transaction is not likely to raise competition concerns.

Further, the CCI noted that there are vertical links between the activities of the parties in the: (i) upstream market for the provision of digital payments services in India, and downstream market for the procurement of digital payments services in India; (ii) upstream market for the provision of mobile wallet and UPI-based payments services in India, and downstream market for the procurement of mobile wallet and UPI-based payments services in India; and (iii) upstream market for the provision of online advertising services in India, and downstream market for the procurement of online advertising services 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 July 12, 2021)*

### **CCI approves acquisition of minority shareholding of Azure Power by OMERS under Green Channel**

The CCI approved the acquisition of 19.36 per cent of the equity share capital of Azure Power Global Limited<sup>19</sup> by OMERS Infrastructure Asia Holdings Pte. Ltd.<sup>20</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 Apollo under Green Channel**

The CCI approved the acquisition of minority shareholding in JSW Cement Limited (**JSW Cement**)<sup>21</sup> by Apollo Management, L.P. (**Apollo**)<sup>22</sup> (referred to as the ‘**Proposed Transaction**’). The parties notified the Proposed Transaction under GCR as there were no horizontal, vertical, or complementary overlaps between the activities of the portfolio companies of Apollo group and JSW Cement in India.

*(Source: Summary)*

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<sup>18</sup> Business to business sale of food packaging material in India.

<sup>19</sup> It is engaged in producing and selling solar power in India.

<sup>20</sup> It is an investment entity of OMERS Administration Corporation (**OAC**), an administrator of Ontario Municipal Employees Retirement System (**OMERS**) primary pension plan and trustee of the pension funds thereunder.

<sup>21</sup> It is engaged in the production of environmentally sustainable cement.

<sup>22</sup> Through AP Asia Opportunistic Holdings Pte. Ltd. Apollo, invests in companies and debt issued by companies involved in various businesses throughout the world.

## CCI approves acquisition of shareholding of PNB Housing Finance by Carlyle Group and Salisbury Investments under Green Channel

The CCI approved the acquisition of approximately 56.29 per cent and 0.24 per cent of equity share capital of PNB Housing Finance Limited<sup>23</sup> by Carlyle group<sup>24</sup> and Salisbury Investments Private Limited<sup>25</sup> respectively (referred to as the ‘Proposed Transaction’). The parties notified the Proposed Transaction under GCR as there were no horizontal, vertical, or complementary overlaps between the activities of the parties in India.

*(Source: Summary)*

## CCI approves acquisition of shareholding of OFB Tech by Softbank Group under Green Channel

The CCI approved the acquisition of certain equity share capital of OFB Tech Private Limited (**OFB**)<sup>26</sup> by Softbank group<sup>27</sup> (referred to as the ‘**Proposed Transaction**’). The parties notified the Proposed Transaction under GCR as there were no horizontal, vertical, or complementary overlaps between the activities of the portfolio companies of Softbank group and OFB in India.

*(Source: Summary)*

## CCI approves acquisition of certain shareholding of Jayaswal Neco Industries by Assets Care & Reconstruction Enterprise and ACRE Trusts under Green Channel

The CCI approved the acquisition of certain equity share capital of Jayaswal Neco Industries Limited (**JNIL**)<sup>28</sup> by Assets Care & Reconstruction Enterprise Limited (**ACRE**)<sup>29</sup> and ACRE Trusts<sup>30</sup> (referred to as the ‘**Proposed Transaction**’). The parties notified the Proposed Transaction under 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>23</sup> It is a registered housing finance company engaged in the business of offering housing and non-housing loans to its retail customers.

<sup>24</sup> Through Pluto Investments S.à r.l.

<sup>25</sup> It is a non-banking finance company, engaged in the business of making investments in financial securities.

<sup>26</sup> It is involved in the wholesale trading of raw materials through a technology enabled platform and has indirect presence in: (i) purchase financing business; (ii) wholesale trading of agricultural materials; (iii) wholesale trading of construction materials and related sub-contracting services; and (iv) operation of a technology platform that assists enterprises in discovering tenders.

<sup>27</sup> Through SVF II Orca (DE) LLC

<sup>28</sup> It is engaged in the business of manufacturing of steel billets, rolled products, pig iron, sponge iron, pellets, captive power generation, captive mining, and iron and steel castings.

<sup>29</sup> It is an asset reconstruction company engaged in the acquisition and recovery of bad loans of banks and financial institutions.

<sup>30</sup> They have been set-up by ACRE and do not carry out any activities other than holding JNIL’s debt.



## CCI approves the internal corporate reorganization of the Daimler AG group under Green Channel

The CCI approved the internal corporate reorganisation of the Daimler AG group (**Daimler Group**)<sup>31</sup> relating to separating Daimler Trucks AG<sup>32</sup> from the Daimler Group to establish two independent companies (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)*

## Media Updates

### Start-up Udaan files complaint against Parle for abusing dominant position

Based on the media reports, Udaan, the business-to-business e-commerce start-up has filed a complaint against Parle Products Private Limited (**Parle**) with the CCI *inter alia* alleging that Parle, being a dominant player in the market for glucose biscuits in India, is abusing its dominant position by refusing to supply its fast-moving products such as Parle-G directly to Udaan without any objective justification. Udaan alleged that this has forced it to purchase the products from Parle’s distributors in the open market causing competitive disadvantage. Further, such conduct by Parle will also force retailers to shift from Udaan to incumbent distributor network of Parle thereby causing Udaan to exit the market altogether.

*(Source: The Business Standard)*

### “Together We Fight Society” files a complaint against Apple for anti-competitive practices

Based on the media reports, a Rajasthan based non-profit group named “Together We Fight Society” has filed a complaint before the CCI against Apple Inc. (Apple) alleging that it is abusing its dominant position in the apps market by forcing developers to use Apple’s proprietary in-app purchase system and imposing exorbitant in-app fee of 30% for distribution of paid digital content. According to the complainant, the said exorbitant fee will raise costs for app developers and customers, while also acting as a barrier to market entry.

*(Source: The Reuters)*

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<sup>31</sup> It globally develops, manufactures and distributes automotive products, primarily passenger cars, vans, trucks and buses and related financial and mobility services.

<sup>32</sup> It heads the trucks & buses business within the Daimler Group and is focused on the manufacturing and sale of trucks and buses.



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