April 2023

Contents

High Court

Delhi High Court: Vacancy or a defect in the constitution of the CCI would not invalidate adjudicatory proceedings before it

The High Court of Delhi ("**DHC**") disposed of the writ petition filed by the Alliance of Digital India Foundation ("**ADIF**")[1] and held that the vacancy or a defect in the constitution of the Competition Commission of India ("**CCI**") would not invalidate any adjudicatory proceedings before it.

Brief Background

On October 25, 2022, the CCI passed an order imposing penalty and certain behavioural directions (**"Directions"**) on Google for abusing its dominant position, in relation to its play store policies, in violation of Section 4 of the Competition Act, 2002 ("**Competition Act**") (referred to as the "**CCI Order**"). For a detailed summary of the CCI Order, refer to JSA Newsletter of October 2022.

Aggrieved, on December 23, 2022, Google filed an appeal against the CCI Order before the National Company Law Appellate Tribunal ("**NCLAT**") and the same is pending before the NCLAT. Failing to obtain any interim stay on the CCI Order (including the Directions) from the NCLAT, on January 25, 2023, Google filed a compliance report before the CCI, declaring that it has complied with the Directions.

On January 31, 2023, March 6, 2023, and March 28, 2023, ADIF, who was also one of the complainants before the CCI, filed applications (referred to as '**Applications**') under Section 42 of the Competition Act before the CCI alleging non-compliance of the Directions by Google.

Proceedings before the DHC

As the CCI did not adjudicate on the Applications due to lack of quorum, ADIF filed the writ petition before the DHC seeking a direction for the CCI to decide the Applications expeditiously, in view of the urgency and non-compliance of the Directions. ADIF argued that Section 15 of the Competition Act makes it amply clear that no act or proceedings before the CCI would be invalidated by reason of any vacancy or defects in the constitution of the CCI. On April 24, 2023, the DHC disposed of the writ petition and held as follows:

1) Section 15 of the Competition Act governs 2 (two) different functions of the CCI namely "*act*", and "*proceedings*". The word "*proceedings*" would mean the adjudicatory powers of the CCI, and the word "*act*" would mean the regulatory and administrative powers of the CCI. Therefore, merely because there is a vacancy or any defect in the constitution of the CCI would not restrict the CCI from performing adjudicatory functions.

2) Sections 8 of the Competition Act contemplates the composition of the CCI and not the quorum of the CCI. There is no provision in the Competition Act that prescribes the minimum number of members that would constitute a valid quorum of the CCI for performing adjudicatory functions.

3) Section 22(3) of the Competition Act makes it clear that the word quorum used in the said provision is only with respect to the *meetings* of the CCI, and the same is not relatable to the adjudicatory functions and therefore, the provision of Section 22 is only with respect to the administrative functions.

1 It is an industry body for India's digital startups formed to fully capitalise on the sector's promise with the objective of its long-term prosperity in mind.

Accordingly, the DHC disposed of the writ petition and directed the CCI to consider the Applications filed before it latest by April 26, 2023.

(Source: DHC Judgment dated April 24, 2023)

National Company Law Appellate Tribunal

NCLAT sets aside the penalty imposed by the CCI on ITC for *gun jumping*

The NCLAT set aside the penalty imposed on ITC Limited ("**ITC**") by the CCI for failing to notify its acquisition of trademarks "*Savlon*" and "*Shower to Shower*" (collectively referred to as the '**Trademarks**') from Johnson & Johnson group in February 2015 (collectively referred to as the '**Transactions**').

Brief Background

On March 4, 2011, the Government of India ("**GoI**") issued a notification exempting a transaction from requiring notification to or approval from the CCI, if the target enterprise has either assets of the value not exceeding INR 250,00,00,000 (Indian Rupees two hundred fifty crore)[2] or turnover not exceeding INR 750,00,00,000 (Indian Rupees seven hundred fifty crore)[3], in India ("**Target Exemption**"). The GoI by way of a notification increased the Target Exemption thresholds to INR 350,00,00,000 (Indian Rupees three hundred fifty crore)[4] for asset and INR 1,000,00,00,000 (Indian Rupees one thousand crores)[5] for turnover on March 4, 2016 ("**2016 Notification")**

On February 12, 2015, ITC entered into separate agreements with Johnson & Johnson group in relation to the acquisition of the Trademarks. The parties consummated the Transactions without seeking approval of the CCI.

On November 7, 2016, the CCI directed ITC to notify the Transactions for its approval and it also initiated gun jumping proceedings against ITC for failure to notify the Transactions. The Transactions were approved by the CCI on March 22, 2017.

On March 27, 2017, the GoI issued another notification clarifying that where a portion of an enterprise or division or business is being acquired, the value of assets of such portion or division or business and/ or the turnover generated by it, will be the relevant assets and turnover to be taken into account for the purposes of calculating the Target Exemption threshold and thresholds under the Competition Act ("**2017 Notification").**

On December 11, 2017, the CCI found ITC guilty of *gun jumping* i.e., consummating the Transactions without seeking approval from the CCI and imposed a penalty of INR 5,00,000 (Indian Rupees five lakh)[6] for failure to notify the Transactions ("**Penalty Order**"). For a detailed summary of the Penalty Order, refer to JSA Newsletter of January 2018.

NCLAT Observations

Aggrieved, ITC challenged the Penalty Order before the NCLAT and *inter- alia* contended that: (a) once the CCI has found that there is no appreciable adverse effect on competition in relation to the Transactions, the CCI does not have the jurisdiction to pass an order under Section 43A of the Competition Act; (b) acquisition of trademarks cannot be equated

2 USD 30,570,000 (US Dollar thirty million five hundred seventy thousand) (approx. USD 1 = INR 81.77).
3 USD 91,720,000 (US Dollar ninety one million seven hundred twenty thousand).
4 USD 42,800,000 (US Dollar forty two million eight hundred thousand).
5 USD 122,290,000 (US Dollar one hundred twenty-two million two hundred ninety thousand).
6 USD 6,114,710,000 (US Dollar six billion one hundred fourteen million seven hundred ten thousand).

to acquisition of an enterprise under Section 5 of the Competition Act as the said section is only applicable to acquisition of an "enterprise"; and (c) the 2017 Notification would have a retrospective application as it was clarificatory in nature and as the turnover of the Trademarks (i.e., INR 68,37,00,000 crores (Indian Rupees sixty eight crore thirty seven lakh)[7]) did not exceed the Target Exemption turnover threshold of INR 750,00,00,000 (Indian Rupees seven hundred fifty crore), the Transaction would not require CCI approval.

The NCLAT *inter-alia* noted that the 2017 Notification is clarificatory in nature as it provides necessary clarification on the method for calculating asset and turnover to analyse notifiability of a transaction to the CCI. Therefore, the 2017 Notification gives a purposive construction to the Target Exemption notification read with the 2016 Notification and therefore, the 2017 Notification will be applied retrospectively in relation to the Transactions. Accordingly, the NCLAT set aside the penalty imposed by the CCI on ITC as Target Exemption was applicable to the Transactions.

(*Source: NCLAT judgment dated April 27, 2023*)

NCLAT reduces penalty imposed on Geep Industries by the CCI for indulging in cartelisation

The NCLAT disposed of the appeal filed by Geep Industries (India) Private Limited ("**Geep Industries**") by reducing the penalty imposed on it by the CCI, for indulging in cartelisation, in contravention of Section 3(3) of the Competition Act.

Brief Background

On August 30, 2018, the CCI passed its final order ("**CCI Order**") against Geep Industries, Panasonic Corporation ("**Panasonic**"), Panasonic Energy India Company Limited ("**Panasonic India**") for indulging in cartelisation, in contravention of Section 3(3) of the Competition Act ("**Cartel**"). For a detailed summary of the CCI Order, refer to JSA Newsletter of August 2018.

The CCI granted 100% immunity to Panasonic India including its office bearers for disclosing the existence of the Cartel under the leniency regulations. On Geep Industries, a penalty: (a) of INR 9,64,06,682 (Indian Rupees nine crore sixty four lakh six thousand six hundred eighty two)[8] was imposed by the CCI at 4% of Geep Industries' turnover for each year of the continuance of the Cartel; and (b) at 10% of the average income of the office bearers of Geep Industries earned during the 3 (three) financial years i.e., 2014-15 to 2016-17.

NCLAT Observations

Aggrieved, Geep Industries challenged the CCI Order before the NCLAT and *inter alia* contended that: (a) Geep Industries was a very small player having a market share of less than 1% and it did not have any substantial influence on competition in the market; and (b) the CCI had imposed disproportionately high penalty by failing to consider several mitigating factors such as Geep Industries: (i) is an insignificant player in the market, having a market share of less than 1%; (ii) was incurring losses in the first 3 (three) years of the period of investigation and made meagre profits thereafter; and (iii) had no bargaining power to contest the condition imposed on it by Panasonic India ('referred to as the '**Mitigating Factors**').

The NCLAT *inter alia* held that even though Geep Industries was a very small player in the market and did not have the ability to influence competition in the said market, the fact that Geep Industries agreed to follow the market prices set by Panasonic India makes it evident that such conduct is in contravention of Section 3(3) of the Competition Act.

---

7 USD 8,360,000 (US Dollar eight million three hundred sixty thousand).
8 USD 1,180,000 (US Dollar one million one hundred eighty thousand).

With respect to the computation of penalty, the NCLAT held that the CCI failed to: (a) take into consideration the Mitigating Factors; and (b) perform its statutory obligation by not giving any reasons for imposing such high penalty on Geep Industries.

Accordingly, the NCLAT reduced the penalty by imposing the penalty at 1% of the turnover for each year for the continuance of the Cartel. The NCLAT didn't modify the penalty imposed on the office bearers of Geep Industries and held that the penalty imposed by the CCI on them was commensurate with their involvement in the Cartel.

(*Source: NCLAT Judgment dated March 31, 2023*)

Competition Commission of India

Merger Control

CCI approves acquisition of IDBI Mutual Fund by LIC

The CCI approved the: (a) acquisition of the rights to manage and administer the schemes of IDBI Mutual Fund ("**IDBI MF"**) by LIC Mutual Fund Asset Management Limited ("**LIC AMC"**)[9]; (b) acquisition of the rights of trusteeship of the schemes of IDBI MF by LIC Mutual Fund Trustee Private Limited' ("**LIC TC"**)[10]; and (c) acquisition of minority shareholding[11] of LIC AMC by IDBI Asset Management Limited ("**IDBI AMC"**)[12] (collectively referred to as the '**Proposed Transaction**').

The CCI noted that there are horizontal overlaps between the activities of the parties[13] in the broad market for the provision of mutual funds in India and narrow market for provision of equity, debt and hybrid mutual funds. However, given the low combined market shares of the parties with the presence of several significant players in each of the relevant markets, the CCI noted that the Proposed Transaction is not likely to raise competition concerns.

Further, the CCI examined the vertical links between the activities of the parties in the: (a) upstream market for the provision of mutual funds in India[14]; and (b) downstream market for distribution of mutual funds in India[15]. Given the low combined market shares of the parties with the presence of several significant players in each of the relevant markets, the CCI noted that the Proposed Transaction is not likely to raise foreclosure concerns. The CCI approved the Proposed Transaction in 43 (forty three) calendar days.

JSA represented IDBI MF before the CCI.

(Source: CCI Order dated March 22, 2023)

---

9 It belongs to the LIC group and is the investment management advisor to LIC MF. It manages the investment portfolio and provides various administrative services to LIC MF.
10 It acts as the trustee company of LIC MF.
11 It is an acquisition of non-controlling shareholding of LIC AMC.
12 It acts as the asset management company to IDBI MF.
13 Through LIC group (including its affiliates) and IDBI MF
14 Through LIC group (including its affiliates) and IDBI MF
15 Through LIC group

CCI conditionally approves acquisition of Hindustan National Glass & Industries by Somany Impresa

The CCI conditionally approved the acquisition of up to 100% shareholding of Hindustan National Glass & Industries Limited ("**HNG**")[16] by AGI Greenpac Limited ("**AGI**")[17] belonging to the Somany Impresa group under the Insolvency and Bankruptcy Code, 2016[18] ("**Proposed Transaction**")[19].

The CCI noted that there is a horizontal overlap between the activities of the parties[20] in the broad market for the manufacture and supply of packaging material for container glass in India ("**Container Glass Market**") and in the narrow markets of manufacture and supply of packaging material for container glass:

a) used for: (i) F&B ("**F&B Market**"); (ii) pharmaceuticals and wellness; (iii) alco-beverages ("**Alco-Beverages Market**"); (iv) household and cosmetics; and

b) used by: (i) wholesale consumers; and (ii) retail consumers.

As the combined market shares of the parties in the: (a) Container Glass Market is 40-45%[21]; (b) F&B Market is 80-85%; and (c) Alco-Beverages Market is 45-50%, the CCI observed that the same would raise competition concerns. Further, with respect to the market for sale of container glass to wholesale consumers, the CCI noted that the parties' sale in this market are minuscule when compared to their overall sales, however, given that the parties have significant presence in the Container Glass Market, F&B Market and Alco-Beverages Market, the same would raise competition concerns.

Accordingly, the CCI issued a show cause notice directing AGI to explain why detailed investigation in relation to the Proposed Transaction should not be conducted. To alleviate the competition concerns, by way of a voluntary modification, AGI offered the divestiture of HNG's glass manufacturing plant in Rishikesh[22] ("**Remedy**"). The CCI noted that the Remedy is adequate to address the competition concerns.

Further, the CCI examined the potential vertical/ complementary links between the activities of the parties in the market for the manufacture and supply of security caps and closures[23]. However, given the low combined market shares of the parties with the presence of several significant players, the Proposed Transaction is not likely to raise foreclosure concerns.

The CCI approved the Proposed Transaction subject to the parties fulfilling the Remedy. The CCI approved the Proposed Transaction in 133 (one hundred thirty three) calendar days.

(Source: CCI Order dated March 15, 2023)

---

16 It is engaged in the manufacture and supply of glass containers in India for industries like alco-beverages, household and cosmetics, pharmaceutical and wellness, and F&B.

17 It is engaged in the manufacture and supply of glass containers in India for industries like alco-beverages, non-alcoholic beverages, cosmetics and perfumery, pharmaceutical, F&B.

18 The notice was filed pursuant to the submission of a resolution plan for HNG before the resolution professional on September 26, 2022.

19 The notice was first filed in a short form i.e., Form I by AGI. However, as the information provided in the notice was insufficient and the combined market share of the parties exceeded 15% in one of the markets, the CCI invalidated the Form I and directed AGI to file the notice in a long form i.e., Form II which was done on November 3 2022.

20 Through the Somany Impresa group (through AGI) and HNG (including its affiliates).

21 As per reports and estimates, the combined market shares may be 55-60%.

22 It is HNG's plant with 2 (two) glass melting furnaces which is present in glass manufacturing in: (a) Alco-Beverage Market; (b) F&B Market; (c) cosmetics and perfumery market; and (d) pharmaceuticals market with the capability to manufacture various coloured glass at the same time.

23 Through the Somany Impresa group (through AGI). HNG is not engaged in the manufacture and supply of security caps and closures.

CCI approves acquisition and sole control of Meritor by Cummins

The CCI approved the acquisition and sole control of Meritor Inc. ("**Meritor**")[24] by Cummins Inc. ("**Cummins**")[25], belonging to the Cummins group ("**Transaction**")[26]. The CCI noted that the notice for the Transaction was filed after it was already consummated by the parties.

The CCI noted that there are horizontal overlaps between the activities of the parties[27] in the broad market for the manufacture and supply of automotive components in India, and in the narrow market for trading of clutches in India. However, given the low combined market shares of the parties with the presence of several significant players in each of the relevant markets, the Transaction is not likely to raise competition concerns.

Further, the CCI examined the potential complementary link between the activities of parties[28] as brakes and axle can be complementary to engines. However, given the low combined market share of the parties, with the presence of several significant players, the Transaction is not likely to raise foreclosure concerns. The CCI approved the Transaction in 133 (one hundred thirty three) calendar days.

(Source: CCI Order dated March 14, 2023)

CCI approves acquisition of Bhilai Jaypee Cement and certain assets of Jayprakash Associates and Jayprakash Power Ventures by Dalmia Bharat

The CCI approved the acquisition by Dalmia Cement (Bharat) Limited[29] of (a) 74% shareholding of Bhilai Jaypee Cement Limited ("**BJCL**"); (b) cement grinding unit of Jayprakash Power Ventures Limited and connected assets ("**JPVL**") in Madhya Pradesh ("**MP**"); (c) 57% shareholding of East India Private Limited[30] which will house a power plant and connected assets in Uttar Pradesh ("**UP**"); (d) various business undertakings of Jayprakash Associates Limited ("**JAL**") including their cement and cement blending plants and connected assets in UP and MP; and (e) JP Super plant and connected assets in UP[31] ("**Proposed Transaction**").

The CCI noted that there are horizontal overlaps between the activities of the parties[32] in the:

a) market for the manufacture and sale of grey cement in the: (i) eastern relevant market[33]; (ii) narrow eastern relevant market[34]; and (iii) MP/UP relevant market[35] ;

---

24 It is a global supplier of axles, brakes, and other modules and components to OEMs and the aftermarket for the commercial vehicle, transportation and industrial sectors.
25 It is the ultimate holding company of the Cummins group and is a supplier that designs, manufactures, distributes and services diesel, natural gas, electric and hybrid powertrains and powertrain related components.
26 The Transaction was consummated by way of a reverse triangular merger where Rose NewCo Inc., a company newly incorporated by Cummins, merges with and into Meritor; and Meritor survives as the directly wholly owned subsidiary of Cummins.
27 Through Meritor (including its affiliates) and Cummins (including its affiliates).
28 Through Meritor (including its affiliates) and Cummins (including its affiliates).
29 It is a wholly owned subsidiary of Dalmia Bharat Limited. It is primarily engaged in the segments for: (a) manufacture and sale of cement; (b) manufacture and sale of sugar; and (c) provision of refractory services in India and Europe.
30 It is a special purpose vehicle (SPV) incorporated by JAL.
31 The acquisition of the JP Super plant is subject to the: (a) settlement of pending disputes between JAL and UltraTech Cement Limited and (b) JAL assuming actual possession of the JP Super plant and connected mines and the JP Super plant being held by JAL on a going concern basis free from all encumbrances.
32 Through the Dalmia Bharat group (including its affiliates) and the Target (including its affiliates)
33 Comprising of Chhattisgarh, Odisha, West Bengal, Bihar, and Jharkhand.
34 Comprising of Chhattisgarh, Bihar and Odisha.
35 Comprising of UP, MP, Rajasthan, Haryana, and Delhi

b) market for the manufacture and sale of clinker in India; and
c) broad market for power generation in India including the narrow market of thermal power generation in India[36].

However, given the combined market shares of the parties do not exceed 20% in any of the relevant markets with the presence of several significant players in each of the relevant markets, the CCI noted that the Proposed Transaction is not likely to raise competition concerns.

Further, the CCI examined the potential vertical links between the activities of the parties in the: (a) upstream market for providing refractory services[37] (like bricks, castables, and application of refractory products) in India[38] and the downstream market of procurement of refractory services in India[39]; and (b) upstream market for the manufacture and sale of clinker in India[40] and the downstream market for the procurement of clinker in India[41].

Given that the Dalmia Bharat group sold its refractory business in November 2022 and will cease to engage in refractory services from financial year 2022-23 and low combined market shares of the parties with the presence of several significant players in each of the relevant markets, the CCI noted that the Proposed Transaction is not likely to raise foreclosure concerns. The CCI approved the Proposed Transaction in 62 (sixty two) calendar days.

(Source: CCI Order dated February 15, 2023)

CCI approves combination between Advent and Lanxess

The CCI approved the consolidation of the high-performance material business (“**HPM Business”**)[42] of Lanxess Deutschland GmbH (**LDG**)[43] and the engineering materials business (“**DEM Business”**)[44] of Koninklijke DSM N.V. (“**DSM”**) into Zehnte LXS GmbH (“**JV HoldCo.”**)[45]. Upon the said consolidation, Advent International Corporation (“**Advent”**)[46] will acquire 58-70% shareholding of the JV HoldCo. and the remaining shareholding of 30-42% will be held by LDG, a wholly owned subsidiary of Lanxess AG (“**Lanxess”**) (referred to as the “**Proposed Transaction**”). Pursuant to the Proposed Transaction, JV HoldCo. will be jointly controlled by Advent and Lanxess.

The CCI noted that there are horizontal overlaps between the activities of the parties in the market for the manufacture and supply of polyamides. However: (a) given the low combined market shares of the parties with the presence of several significant players in the relevant market; and (b) the other players can increase production in response to increase in price of the products due to spare capacity and high degree of supply side substitutability between different types of polyamides, the CCI noted that the Proposed Transaction is not likely to raise competition concerns.

---

36 The parties engage in power generation primarily for captive consumption.
37 Refractories are the essential lining materials used for working interfaces and backup zone of furnaces throughout the manufacturing of steel, cement, glass, aluminum, copper and other metals and non-metals.
38 Through the Dalmia Bharat group (including its affiliates).
39 Through the Target.
40 Through the Target.
41 Through the Dalmia Bharat group (including its affiliates).
42 It includes manufacture, sale, and marketing of high-performance thermoplastic polymers and intermediates necessary for the production of polymers by LDG.
43 LDG is a wholly owned subsidiary of Lanxess.
44 It includes manufacturing and sale business of high-performance thermoplastics by DSM.
45 It is a newly incorporated entity and is an indirect wholly owned subsidiary of Lanxess which is primarily engaged in development, manufacturing, and marketing of chemical intermediates, additives, specialty chemicals, and plastics.
46 Through Platin 2170 GmbH. Advent is a private equity investor and focuses on: (a) the acquisition of equity stakes in companies; and (b) the management of investment funds.

Further, the CCI examined the vertical links between the activities of the parties in the: (a) upstream market for the supply of glass fiber and the downstream market for manufacturing polyamides and engineered polyamides; and (b) upstream market for the supply of base polymers and downstream market for manufacturing and supply of engineering plastics, in India. However, given the low combined market shares of the parties with the presence of several significant players in each of the relevant markets, the CCI noted that the Proposed Transaction is not likely to raise foreclosure concerns. The CCI approved the Proposed Transaction in 76 (seventy six) calendar days.

(Summary: CCI Order dated February 13, 2023)

CCI approves acquisition of additional shareholding and sole control of Keimed by Shobhana Kamineni

The CCI approved the acquisition of additional 20% shareholding of Keimed Private Limited ("**Keimed"**)[47] by Shobhana Kamineni[48] ("**Ms. Kamineni"**)[49] (referred to as the "**Proposed Transaction**").

Presently, Keimed is under the joint control of Ms. Kamineni and Mitsui & Co. (Asia Pacific) Pte. Ltd. Pursuant to the Proposed Transaction, Keimed will be solely controlled by Ms. Kamineni. Hence, there will be change in control of Keimed.

The CCI noted that the key aspect for examination from competition perspective in cases involving change in control from joint to sole or changes in degree or quality of control is the change in ability/incentive of the entity acquiring sole control resulting from lifting of restraining influence of other shareholders arising from their potentially different interests. Such potential differences in interests are more likely in the event of entities involved having separate presence in the related areas apart from the entity(ies) which is/are under joint control. Further, such potential differences would also depend upon various factors viz., *inter alia*, extent of shareholding, nature of rights, overall presence of the entity etc.

The CCI noted that there are horizontal overlaps between the activities of the parties[50] in the market for the retail sale of drugs. However, given the low combined market shares of the parties with the presence of several significant players, the Proposed Transaction is not likely to raise competition concerns.

Further, the CCI examined the existing vertical relationship between the activities of the parties[51] in the upstream market for wholesale sale and distribution of drugs in India and the downstream markets for the: (a) provision of healthcare services in India; and (b) retail sale of drugs in India. Given the low combined market shares of the parties with the presence of several significant players in each of the relevant markets, the CCI noted that the Proposed Transaction is not likely to raise foreclosure concerns. The CCI approved the Proposed Transaction in 113 (one hundred thirteen) calendar days.

(Source: CCI order dated February 9, 2023)

---

[47] It is engaged in wholesale sale and distribution of pharmaceutical products/drugs, healthcare and wellness products, medical consumables, and surgical/hospital consumables across India.

[48] She holds more than 99% shareholding of Primetime Logistics Technologies Private Limited. She is also executive vice chairperson and director of Apollo Hospitals Enterprise Limited ("**Apollo**") and a member of its founding family. She also holds shareholding and / or directorship in numerous entities ("**Associated Entities"**).

[49] Through Primetime Logistics Technologies Private Limited

[50] Through Keimed (including its affiliates) and Apollo.

[51] Through Keimed and the Associated Entities.

CCI approves acquisition of Lanco Anpara Power by Megha Engineering and Infrastructures

The CCI approved the acquisition of 100% shareholding of Lanco Anpara Power Limited ("**LAPL**")[52] by Megha Engineering and Infrastructures Limited ("**MEIL**")[53] (referred to as the '**Proposed Transaction**').

The CCI noted that there are horizontal overlaps between the activities of the parties[54] in the broad market for power generation and narrow market for power generation through thermal source (using coal), in India. However, given the low combined market shares of the parties with the presence of several significant players in each of the relevant markets, the CCI noted that the Proposed Transaction is not likely to raise competition concerns.

Further, the CCI examined the vertical links between the activities of the parties[55] in the: (a) upstream market for power generation and the downstream market for power transmission, in India; and (b) upstream market for provision of engineering, procurement and construction solutions for power generation and the downstream market for power generation, in India. However, given the low combined market shares of the parties with the presence of several significant players in each of the relevant markets, the CCI noted that the Proposed Transaction is not likely to raise foreclosure concerns. The CCI approved the Proposed Transaction in 100 (one hundred) calendar days.

(Source: CCI Order dated February 9, 2023)

CCI approves acquisition of shareholding of Hindustan Ports by National Investment and Infrastructure Fund and merger of Hindustan Infralog with and into Hindustan Ports

The CCI approved the acquisition of up to 25% shareholding of Hindustan Ports Private Limited ("**HPPL**")[56] by National Investment and Infrastructure Fund ("**NIIF**")[57] (referred to as the '**Proposed Acquisition**'). Pursuant to the Proposed Acquisition, Hindustan Infralog Private Limited ("**HIPL**")[58] will merge with and into HPPL ("**Proposed Merger**"). Proposed Acquisition and Proposed Merger are collectively referred to as the '**Proposed Transaction**'. Pursuant to the Proposed Transaction, NIIF will hold 22-30% shareholding of HPPL.

The CCI noted that there are horizontal overlaps between the activities of the parties[59] in the market for: (a) container rail operations ("**CRO**") in India; and (b) container freight station at Chennai Port. However, given the low combined market shares of the parties with the presence of several significant players in each of the relevant markets, the Proposed Transaction is not likely to raise competition concerns.

---

52 It belongs to the Lanco group of companies and is engaged in thermal power generation.

53 Through MEIL Energy Private Limited, a newly incorporated entity. MEIL is a public limited company incorporated in India and is primarily engaged in undertaking engineering, procurement and construction, projects in various. It is also involved in the generation and transmission of power.

54 Through the MEIL group (including its affiliates) and LAPL.

55 Through the MEIL group (including its affiliates) and LAPL.

56 It is a wholly owned subsidiary of Dubai Ports World Limited ("**DP World**") and is primarily engaged in the operation of container terminals of different terminals of the ports through its special purpose vehicle. It is also engaged in providing container freight station services and container rails and related services in India.

57 It is a category II Alternative Investment Fund registered with the Securities and Exchange Board of India, NIIF primarily focuses on investing in core infrastructure sectors such as transportation, energy, and digital.

58 It is a subsidiary of DP World, in which NIIF also holds 35% shareholding. It is engaged in the business of providing several services such as: (a) freight forwarding services; (b) empty container handling; and (c) domestic rail operations.

59 Through HPPL (including its affiliates) and HIPL (including its affiliates). The CCI also mapped the overlaps between NIIF (including its affiliates other than HIPL) and HPPL however, there were no horizontal overlaps between the activities of the parties.

Further, the CCI examined the existing vertical relationship between the activities of the parties[60] in the upstream/ downstream market for CRO in India, and upstream/downstream market for inland container depots in Ahmedabad, NCR, and Hyderabad. However, given the low combined market share of the parties especially in market for CRO in India, with the presence of several significant players, the CCI noted that the Proposed Transaction is not likely to raise foreclosure concerns. The CCI approved the Proposed Transaction in 126 (one hundred twenty six) calendar days.

(Source: CCI Order dated, February 9, 2023)

CCI approves acquisition of SREI Infrastructure by National Asset Reconstruction and India Debt Resolution under Green Channel

The CCI approved the acquisition of majority shareholding of SREI Infrastructure Finance Limited[61] by National Asset Reconstruction Company Limited ("**NARCL**")[62] and India Debt Resolution Company Limited[63] ("**Proposed Transaction**"). The parties notified the Proposed Transaction under green channel as there were no horizontal, vertical, or complementary overlaps between the activities of the parties in India.

(Source: Summary)

CCI approves acquisition of VVDN Technologies by India Business Excellence Fund under Green Channel

The CCI approved the acquisition of shareholding of VVDN Technologies Private Limited[64] by India Business Excellence Fund-IV[65] (**"Proposed Transaction"**). The parties notified the Proposed Transaction under green channel as there were no horizontal, vertical, or complementary overlaps between the activities of the parties in India.

(Source: Summary)

CCI approves acquisition of majority shareholding of climate technologies business of Emerson Electric by Blackstone, GIC and ADIA under Green Channel

The CCI approved the: (a) acquisition of majority shareholding of the climate technologies business of Emerson Electric Co. by Blackstone Inc.[66]; and (b) investment by Stamford Bridge Investment Pte. Ltd belonging to the GIC group[67] and Abu Dhabi Investment Authority ("**ADIA**")[68] in BCP Emerald Aggregator L.P. The parties notified the Proposed Transaction

---

60 Affiliate of HPPL has appointed affiliates of HIPL to operate trains on routes between gateway ports and private freight terminals/ inland container depots.

61 It is engaged in providing financing / leasing for procurement of infrastructure equipment used in construction, roads, mining, railways, port and other infrastructure sectors, infrastructure project advisory services, financial advisory services, insurance broking services, and merchant banking services.

62 It is an asset reconstruction company which takes over stressed assets of banks assisting banks to clean-up their balance sheets.

63 It provides debt management services including, resolution of stressed assets, to NARCL.

64 It is engaged in providing electronic manufacturing services / original design manufacturing in 5G, networking and Wi-Fi, Internet of Things, camera-based solutions, cloud-based solutions, and data centre infrastructure.

65 It is a category-II alternative investment fund registered with the Securities Exchange Board of India and invests in equity and equity-linked instruments and/or debt and/or mezzanine or other instruments of Indian or India related companies.

66 Through BCP Emerald Aggregator L.P. which is recently incorporated entity for the purpose of the Proposed Transaction. It is an affiliate of funds advised and managed by the affiliates of Blackstone Inc.

67 It is wholly owned by GIC (Ventures) Private Limited.

68 Through Platinum Falcon B 2018 RSC Limited ("**Platinum**") which is a restricted scope company, incorporated in the Abu Dhabi Global Market, that makes investments into the private equities' asset class. Platinum is indirectly wholly owned by ADIA. Apart from making investments, Platinum does not carry out any business activities directly in India.

under the green channel route as there were no horizontal, vertical, or complementary overlaps between the activities of the parties in India.

(Source: Summary)

Competition Practice

Since the inception of the Indian competition regime, JSA has been a one-stop shop for all types of competition and anti-trust-related matters. As such, the team's in-depth understanding of the competition law, coupled with its commercially focused litigation skills has been the cornerstone on which it deals with matters relating to cartelisation (including leniency), abuse of dominance, vertical agreements, and dawn raid before the Competition Commission of India and appellate courts. The team regularly advises clients on general competition law issues arising from day-to-day business strategies and conducts competition compliance training for clients. Given the team's continued involvement with the regulator, coupled with its balanced and practical approach to competition law, it has been instrumental in shaping the competition law jurisprudence in India.

Over the years, the team has developed a reputation of not only being well regarded by its peers but also for having developed a good working relationship with the regulatory authorities. As such our lawyers have been involved in drafting statutory regulations and have represented the Indian competition law fraternity at various competition law seminars, workshops, and advocacy & public awareness programs across the world. The team's expertise (including team members) has been widely recognised by various leading international rankings and publications including Chambers and Partners, Who's Who Legal, Global Competition Review, Benchmark Litigation, Asialaw, and the Legal 500.

This Newsletter has been prepared by:

Vaibhav Choukse
Partner & Head of Practice
(Competition Law)

Ela Bali
Partner

Nripi Jolly
Senior Associate

Faiz Siddiqui
Associate

Global Competition Review (GCR) has recognized JSA's Competition Law Practice in its latest 2023 edition of 'GCR 100

17 Practices and
24 Ranked Lawyers

16 Practices and
11 Ranked Lawyers

7 Practices and
2 Ranked Lawyers

11 Practices and
39 Ranked Partners
IFLR1000 APAC Rankings 2022

Banking & Finance Team of the Year

Fintech Team of the Year

Restructuring & Insolvency Team of the Year

Among Top 7 Best Overall Law Firms in India and 10 Ranked Practices

----

13 winning Deals in IBLJ Deals of the Year

----

10 A List Lawyers in IBLJ Top 100 Lawyer List

Banking & Financial Services
Law Firm of the Year 2022

Dispute Resolution Law
Firm of the Year 2022

Equity Market Deal of the
Year (Premium) 2022

Energy Law Firm of the Year 2021

Ranked #1
The Vahura Best Law Firms to Work Report, 2022

Top 10 Best Law Firms for
Women in 2022

For more details, please contact km@jsalaw.com

www.jsalaw.com

Ahmedabad | Bengaluru | Chennai | Gurugram | Hyderabad | Mumbai | New Delhi