



JSA Newsletter Competition Law

November 2024

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High Courts

Punjab and Haryana High Court stays Competition Commission of India's investigation against Savan Retailers Private Limited

Punjab and Haryana High Court ("**P&H HC**") granted an interim stay on the proceedings initiated by Competition Commission of India ("**CCI**") against Savan Retailers Private Limited ("**Savan Retail**").

In January 2020, CCI directed Director General ("**DG**") to initiate an investigation against Amazon and Flipkart for alleged contravention of Section 3(4) of the Competition Act, 2002 ("**Competition Act**") (referred to as the "**Prima Facie Order**"). As part of the investigation, DG issued notices to the sellers of Amazon and Flipkart including Savan Retail seeking information from them as 'third parties'. However, in August 2024, CCI issued an order ("**CCI Order**") forwarding a copy of non-confidential version of the investigation report to Amazon, Flipkart, and their respective sellers. CCI further reclassified these sellers, including Savan Retail, from the status of 'third parties' to that of 'opposite parties.'

Aggrieved, Savan Retail filed a writ petition before P&H HC challenging the CCI Order *inter alia* contending that the Prima Facie Order was only *qua* Amazon and Flipkart and DG ought to have taken prior approval from CCI before changing the status of Savan Retail from a 'third party' to an 'opposite party'. Accordingly, its inclusion as an opposite party is against the scheme of the Competition Act. P&H HC agreed with the contentions of Savan Retail and granted an interim stay on CCI's proceedings.

JSA represented Savan Retail before P&H HC.

(Source: P&H HC order dated November 26, 2024)

Competition Commission of India

Enforcement

CCI imposes INR 213.14 crore penalty on Meta Platforms, Inc. for abusing its dominant position

On November 18, 2024, CCI found Meta Platforms, Inc. ("**Meta**") abusing its dominant position in India's Over-the-Top ("**OTT**") messaging market, through WhatsApp LLC ("**WhatsApp**"). CCI found Meta guilty of imposing unfair conditions through WhatsApp's 2021 terms of service and privacy policy update ("**2021 Policy**"), denying market access in the online display advertising market, and leveraging its dominance in the OTT messaging sector to protect its position in the online advertising market, in violation of Section 4 of the Competition Act.

Background

In January 2021, WhatsApp announced updates to its terms of service and privacy policy through the 2021 Policy, requiring user acceptance to continue using the platform. Upon acceptance, the user data will be shared with Meta and other Meta companies. Failure to accept the 2021 Policy would lead to the suspension or deletion of the users' Whatsapp account. By May 2021, Meta clarified that accounts would not be deleted or deactivated for non-acceptance, though many users had already consented.

Under the previous policy, users could opt out of data sharing with Facebook (now, Meta). The 2021 Policy, however, mandates data sharing without an opt-out option, encompassing personal information such as language preferences, behaviour, mobile numbers, profile pictures, and data of small businesses.

In 2021, CCI took *suo moto* cognizance of media reports on the 2021 Policy and directed an investigation against Meta for abuse of dominant position. After a detailed investigation, DG submitted its investigation report to CCI in January 2023 wherein it found that Meta (through Whatsapp) has abused its dominant position in violation of Section 4 of the Competition Act.

CCI Order

CCI examined Meta's business activities and conduct in the markets for: (a) OTT messaging apps through smartphones in India ("**OTT Market**"); and (b) online display advertising in India ("**Advertising Market**").

1. **OTT Market**: CCI held that Meta through WhatsApp is dominant in the OTT Market and abused its dominant position, for the following reasons:
 - a) the 2021 Policy imposed a 'take-it-or-leave-it' condition, requiring users to accept new data-sharing terms with Meta or lose access to Whatsapp, imposing unfair conditions on users;
 - b) WhatsApp collected more user data than necessary compared to its competitors, violating users' rights to control their personal information; and
 - c) Indian users were denied key data rights, such as access, rectification, portability, erasure, and processing restrictions, which were available to European Union users, reflecting discriminatory practices.
2. **Advertising Market**: CCI observed that while Meta is not dominant in the Advertising Market, its dominance in the OTT Market raises competition concerns applicable to the Advertising Market. CCI *inter alia* noted:
 - a) Meta, through WhatsApp, accessed extensive user data, enabling targeted advertisements that could increase market efficiency by tailoring ads to user needs;
 - b) the data-sharing model between Meta and WhatsApp could strengthen Meta's market position by fostering user dependence, thereby denying market access to competitors; and
 - c) Meta leveraged its dominant position in the OTT Market through the 2021 Policy to protect its position in the Advertising Market.

Based on the above, CCI imposed (a) a monetary penalty of INR 213.14 crore (Indian Rupees two hundred and thirteen crore fourteen lakh) (approx. USD 25,000,000 (US Dollars twenty-five million)); and (b) certain behavioural remedies on WhatsApp / Meta, which include:

- a) cease and desist from engaging in the identified anti-competitive practices;
- b) prohibition on sharing user data with other Meta companies for advertising purposes for 5 (five) years; and
- c) Data sharing for non-advertising purposes will be permitted if:
 - i) WhatsApp's policy clearly explains details of the users' data shared with other Meta companies, specifying the purpose for sharing each data type;

- ii) sharing users' data collected on WhatsApp with other Meta companies for non-WhatsApp services must not be mandatory for users to access WhatsApp in India; and
- iii) Users must be given the option to opt out of data sharing or modify their choice later through a prominent in-app notification.

(Source: CCI order dated November 18, 2024)

Merger Control

CCI approves 8 (eight) combinations in the month of November 2024; detailed approval orders to be published

1. Acquisition of shareholding of STT GDC Pte. Ltd. by Ruby Asia Holdings II Pte. Ltd. and Singtel Interactive Pte. Ltd.
2. Acquisition of Schenker Aktiengesellschaft by DSV Holding Germany GmbH.
3. Acquisition of the standard unsecured personal loans portfolio of the Standard Chartered Bank, India Branch by Kotak Mahindra Bank Limited.
4. Acquisition of shareholding of Rebel Foods Limited by Jongsong Investments Pte. Ltd.
5. Acquisition of shareholding of DMI Finance Private Limited by MUFG Bank, Ltd.
6. Acquisition of shareholding of Flipkart Private Limited by Shoreline International Holdings LLC.
7. Acquisition of shareholding of Fosroc Top One Limited, Fosroc Top Two Limited, Fosroc Supply FZE.
8. Acquisition of shareholding of Interise Trust and Interise Investment Managers Limited by 2726247 Ontario Inc. and OMERS Infrastructure Asia Holdings Pte. Limited, respectively under Green Channel.

(Source: CCI Website)

CCI approves combination involving Rasmeli Limited, Apollo Hospitals Enterprise Limited, Apollo Healthco Limited and Keimed Private Limited

CCI approved the:

1. acquisition of up to 16.9% of shareholding and voting rights of Apollo Healthco Limited ("AHL") by Rasmeli Limited¹;
2. acquisition of 11.189% shareholding of Keimed Private Limited ("Keimed")² by AHL;
3. merger of Keimed into AHL with AHL being the surviving entity; and
4. acquisition of 2.41% shareholding of AHL by Apollo Hospitals Enterprise Limited ("AHEL")³

¹ It is an investment holding company and a wholly owned subsidiary of Rasmeli Midco Limited (Cyprus)

² It is *inter alia* engaged in the wholesale and retail sale of pharmaceutical products.

³ It *inter alia* operates hospitals and is a part of the Apollo Hospitals group.

(together referred to as the “**Proposed Transaction**”).

CCI noted that the activities of the parties overlap in the:

- a) broad market for manufacturing, marketing and sale of pharmaceutical products in India (“**Pharmaceuticals Market**”) and narrow markets for: (i) manufacture and sale of Levocetirizine + Montelukast in India at a molecular level; and (ii) dietary supplements for bone and joint health in India;
- b) market for the retail sale of pharmaceutical products in India; and
- c) market for the wholesale sale and distribution of over-the-counter products and fast-moving consumer goods in India.

In its competitive assessment, CCI noted that the combined market shares of the parties are low and that a number of significant competitors are present in the markets, which will pose competitive constraints on the parties. In view of the same, the Proposed Transaction is not likely to raise competition concerns.

CCI also examined certain vertical links between the parties and observed that, given their low market shares and the presence of several significant competitors in the identified vertical markets, the Proposed Transaction is unlikely to raise foreclosure concerns.

CCI approved the Proposed Transaction in 75 (seventy-five) calendar days.

(Source: CCI order dated August 20, 2024)

CCI approves acquisition of additional shareholding of Rane NSK Steering Systems Private Limited by Rane Holdings Limited

CCI approved the acquisition of additional 51% shareholding of Rane NSK Steering Systems Private Limited (“**RNSSPL**”) by Rane Holdings Limited (“**RHL**”) from NSK Limited (Japan) (“**NSK**”) (referred to as the “**Proposed Transaction**”). RNSSPL is a joint venture between RHL (49%) and NSK (51%). Post the Proposed Transaction, RHL will solely own and control RNSSPL.

RHL is a public listed company and is *inter alia* engaged in manufacturing and marketing of automotive components and provides services pertaining to management consultancy, information technology, business development, etc. RNSSPL is a joint venture between RHL and NSK and is *inter alia* engaged in manufacturing steering columns.

In its competitive assessment, CCI noted that the Proposed Transaction involves a change from joint to sole control, with no impact on the market structure or competitive dynamics.

CCI approved the Proposed Transaction in 54 (fifty-four) calendar days.

(Source: CCI order dated September 3, 2024)

CCI approves merger of Tata Motors Finance Limited with and into Tata Capital Limited

CCI approved the merger of Tata Motors Finance Limited (“**TMFL**”) with and into Tata Capital Limited (“**TCL**”) (referred to as the “**Proposed Transaction**”).

Both, TMFL and TCL *inter alia* provide loans and lending services. Accordingly, CCI noted that the activities of the parties overlap in the broad market for loans and lending services in India and in the following narrow markets:

1. market for provision of retail loans in India ("**Retail Loans Market**") and narrower markets for provision of: (a) vehicle/auto loans in India; and (b) micro small and medium ("**MSME**") loans in India; and
2. market for provision of wholesale loans in India and narrower markets for provision of: (i) 4 (four) wheeler passenger car loans in India; and (b) commercial vehicle loans in India.

In its competitive assessment, CCI noted that the combined market shares of the parties are low, and a number of significant competitors are present in each of the relevant markets, which will pose competitive constraints on the parties. In view of the same, the Proposed Transaction is not likely to raise competition concerns.

CCI approved the Proposed Transaction in 29 (twenty-nine) calendar days.

(Source: CCI order dated September 10, 2024)

CCI approves acquisition of shareholding of Vaastu Housing Finance by Naspers Ventures BV

CCI approved the acquisition of 7.8% shareholding of Vaastu Housing Finance Corporation Limited ("**VHFCL**") by Naspers Ventures BV ("**Naspers Ventures**") (referred to as the "**Proposed Transaction**").

Naspers Ventures is an investment holding company having investments in companies involved in several sectors including loans and lending services. VHFCL provides loans and lending services.

Accordingly, CCI noted that the activities of the parties overlap in the broad market for loans and lending services and in the narrow Retail Loans Market and in the narrower market for provision of loans to small businesses/MSMEs in India.

In its competitive assessment, CCI noted that the combined market shares of the parties are low, and a number of significant competitors are present in each of the relevant markets, which will pose competitive constraints on the parties. In view of the same, the Proposed Transaction is not likely to raise competition concerns.

CCI approved the Proposed Transaction in 33 (thirty-three) calendar days.

(Source: CCI order dated September 17, 2024)

CCI approves acquisition of shareholding of Viterra Limited by Bunge Global SA

CCI approved the acquisition of 100% shareholding of Viterra Limited ("**Viterra**") by Bunge Global SA ("**Bunge**") (referred to as the "**Proposed Transaction**").

Both Bunge and Viterra are engaged in the agribusiness. Bunge is engaged in selling refined vegetable oils, crude vegetable oils, soybean meal, glycerine, margarine, lecithin, vanaspati, shortenings, yeast and free fatty acids. Viterra is engaged in selling grains, crude vegetable oils, sunflower meal, sugar, cotton, pulses, and chickpea and yellow pea flours.

CCI noted that the activities of the parties overlap in the:

1. broad market for crude vegetable oil in India, including the narrow markets for: (a) crude soyabean oil in India; and (b) crude sunflower oil in India; and
2. broad market for Non-Grain Feed Ingredients (“**NGFI**”)⁴ in India including the narrow market for sunflower-based NGFI in India.

In its competitive assessment, basis the year-on-year assessment of the market shares of the parties, CCI noted that the combined market shares of the parties have been declining. CCI also noted that since there are number of significant competitors present in each of the relevant markets, it will pose competitive constraints on the parties. In view of the same, the Proposed Transaction is not likely to raise competition concerns.

CCI also examined the potential vertical links between the activities of the parties in the upstream market for marketing of crude vegetable oil (sunflower, and soyabean) and in the downstream market for refined vegetable oil (sunflower, and soyabean), in India. Given the low market shares of the parties with the presence of several significant players in each of the vertical markets, CCI noted that the Proposed Transaction is not likely to raise foreclosure concerns.

CCI approved the Proposed Transaction in 99 (ninety-nine) calendar days.

(Source: CCI order dated July 30, 2024)

CCI approves acquisition of home and personal care business division of Patanjali Ayurved Limited by Patanjali Foods Limited

CCI approved the acquisition of Home and Personal Care (“**HPC**”) business division of Patanjali Ayurved Limited (“**PAL**”) by Patanjali Foods Limited (“**PFL**”) (referred to as the “**Proposed Transaction**”).

PFL is engaged in the business of *inter alia* fast-moving consumer and health goods comprising of food, biscuits and nutraceutical products. PAL is engaged in manufacturing, trading, packing and labelling of HPC items, ayurvedic medicines, etc. The HPC business division includes products under haircare, skincare, dental and home care segments.

In its competitive assessment, CCI observed that the Proposed Transaction is in the nature of an internal transfer of the HPC business within the Patanjali group. Accordingly, CCI noted that there would be no change in the market dynamics as a result of the Proposed Transaction.

CCI examined an existing vertical link between the activities of the parties in the upstream market for the production and sale of oleochemicals and its segments that include soap noodles and glycerin and the downstream market for the production and sale of beauty and personal care products, specifically production of soaps, in India.

CCI noted that: (a) the combined market shares of the parties are low; and (b) several significant players are present in both the upstream and downstream markets which will pose competitive constraints on the parties. Accordingly, the Proposed Transaction was not likely to cause any foreclosure concerns.

CCI approved the transaction in 48 (forty-eight) calendar days.

(Source: CCI order dated October 8, 2024)

⁴ It is plant-derived protein supplements that are produced after extracting oil and are used as animal feed.

CCI approves a combination involving Central Bank of India and Future Enterprises Limited

CCI approved the acquisition by Central Bank of India (“**CBI**”) of:

- a) 0.51% shareholding of Future Generali India Insurance Company Limited (“**FGGI**”);
- b) 25.18% shareholding of Future Generali India Life Insurance Company Limited (“**FGLI**”);
- c) 49.81% shareholding of Sprint Advisory Private Limited; and
- d) 49.82% shareholding of Shendra Advisory Private Limited.

(together referred to as the “**Proposed Transaction**”).

CBI, *inter alia*, is a public sector bank with the Government of India as its majority shareholder.

FGGI and FGLI are affiliates of Future Enterprises Limited (“**FEL**”) and provide general insurance and life insurance products in India, respectively.

While there were no horizontal overlaps between the activities of the parties, CCI examined the existing vertical links between the activities of the parties in the upstream markets for: (a) provision of life insurance products; and (b) provision of general insurance products and downstream market for distribution of insurance products, in India.

Given the low market shares of the parties and the presence of several significant players in the vertical markets, CCI noted that the Proposed Transaction is not likely to raise foreclosure concerns.

CCI approved the Proposed Transaction in 48 (forty-eight) calendar days.

(Source: CCI order dated October 15, 2024)

CCI approves acquisition of shareholding of 12 (twelve) special purpose vehicles of PNC Infratech Limited and PNC Infra Holdings Limited by Highway Infrastructure Trust

CCI approved the acquisition of 12 (twelve) special purpose vehicles (“**SPV Targets**”) of PNC Infratech Limited and PNC Infra Holdings Limited by Highway Infrastructure Trust (“**HIT**”) (referred to as the “**Proposed Transaction**”).

HIT is indirectly controlled by investment funds, vehicles and/or accounts advised and managed by KKR Co. & Inc. and owns various road assets. The SPV Targets have entered into concession agreements with the National Highway Authority of India/Uttar Pradesh State Highways Authority for holding, developing, operating, and maintaining infrastructure projects.

While there were no horizontal overlaps between the activities of the parties, CCI examined the potential vertical links between the activities of the parties in the upstream market for the operation and maintenance of highways in the road infrastructure and downstream market for road assets on origin and destination pair basis, in India.

Given the low market shares of the parties and the presence of several significant players in the vertical markets, CCI noted that the Proposed Transaction is not likely to raise foreclosure concerns.

CCI approved the Proposed Transaction in 83 (eighty-three) calendar days.

(Source: CCI order dated August 6, 2024)

CCI approves acquisition of additional shareholding of Agilus Diagnostics Limited by Fortis Healthcare Limited

CCI approved the acquisition of additional 31.52% shareholding of Agilus Diagnostics Limited ("**Agilus**") by Fortis Healthcare Limited ("**FHL**") (referred to as the "**Proposed Transaction**"). Post the Proposed Transaction the shareholding of FHL will increase from 57.68% to 89.2%.

FHL provides healthcare services in India. The diagnostics service business of FHL is primarily undertaken through Agilus. Agilus is *inter alia* engaged in establishing, maintaining, and managing clinical reference laboratories and other laboratories for providing testing and diagnostic services in India.

While there were no horizontal overlaps between the activities of the parties, CCI examined an existing vertical relationship between the activities of the parties in the upstream market for provision of integrated healthcare delivery services and downstream market for provision of retail diagnostic services, in India. The parties have also entered into an agreement where Agilus will provide pathology and diagnostic services within different hospitals of FHL.

Given the low market shares of the parties and the presence of significant players in the vertical markets, CCI noted that the Proposed Transaction is not likely to raise any foreclosure concerns.

CCI approved the transaction in 55 (fifty-five) calendar days.

(Source: CCI order dated October 29, 2024)

CCI proposes amendments to the CCI (Manner of Recovery of Monetary Penalty) Regulations, 2011

On November 7, 2024, CCI published the draft CCI (Manner of Recovery of Monetary Penalty) Regulations, 2011 ("**Draft Recovery Regulations**") for public comments. The key provisions of the Draft Recovery Regulations are set out below:

1. **Scope of the regulations proposed to be expanded:** The existing regulations are applicable only to enterprises as defined under the Competition Act. The Draft Recovery Regulations propose to expand the scope to include person within its ambit, as defined under the Competition Act.
2. **Issuance of demand notice:** Under the existing regime, the demand notice to recover the penalty is issued to a contravening enterprise only when the period specified in a CCI order within which the penalty has to be paid by such enterprise expires. As per the Draft Recovery Regulations, a demand notice can be issued to enterprise or person simultaneously when an order is passed by CCI imposing penalty irrespective of whether the period within which the penalty is to be paid has expired or not.

(Source: Draft Recovery Regulations)

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 with its dedicated competition law practice group. The Competition team at JSA advises on all aspects of the Indian competition law including merger control, cartels, leniency, abuse of dominance, dawn raid, compliance, and other areas of complex antitrust litigation. 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.

On the **enforcement/ litigation**, the team's in-depth understanding of antitrust and the competition law, coupled with its commercially focused litigation skills has been the cornerstone on which it deals with matters relating to abuse of dominance, vertical restraints, and cartelisation (including leniency and dawn raid) before CCI and appellate courts. On the **merger control**, the team helps clients navigate the merger control and assessment process including obtaining approval of CCI in Green Channel Form, Form I and Form II.

The team regularly advises clients on general competition law issues arising from day-to-day business strategies and conducts competition compliance programs. Notably, the team has conducted forensic reviews of documents and created step-by-step procedures for companies on how to respond to both internal antitrust violations as well as investigations by the regulator, including dawn raids.

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18 Practices and
25 Ranked Lawyers



7 Ranked Practices,
16 Ranked Lawyers



12 Practices and
50 Ranked Lawyers



14 Practices and
38 Ranked Lawyers

Elite – Band 1 -
Corporate/ M&A Practice

3 Band 1 Practices

4 Band 1 Lawyers, 1 Eminent
Practitioner



20 Practices and
22 Ranked Lawyers



Ranked Among Top 5 Law Firms in
India for ESG Practice



Recognised in World's 100 best
competition practices of 2024



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



Asia M&A Ranking 2024 – Tier 1

Employer of Choice 2024



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

11 winning Deals in
IBLJ Deals of the Year

Energy and Resources Law Firm of the
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Top 10 Best Law Firms for Women in
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12 A List Lawyers in
IBLJ Top 100 Lawyer List

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Innovative Technologies Law Firm of
the Year 2023



7 Practices and
3 Ranked Lawyers

Banking & Financial Services
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