



COMPETITION LAW NEWSLETTER

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January 2022 turned out to be an extremely busy period in competition law enforcement. In this edition, we cover six enforcement orders, a significant gun-jumping order, and three significant combinations cleared by the Competition Commission of India (CCI). In addition, the National Company Law Appellate Tribunal (NCLAT), the Madras High Court and the Supreme Court all passed significant judgments.

CCI orders investigation into Google's online search and advertising practices for alleged abuse of dominance

The CCI *vide* [order dated 07.01.2022](#) directed the initiation of an investigation into Google's online search and advertising practices, resulting in the fourth currently ongoing antitrust proceedings against Google in India.

The Digital News Publishers Association alleged that Google was abusing its dominant position by:

- (i) using publishers' content for snippets without compensating the publisher;
- (ii) adopting arbitrary policies regarding advertisement revenue disbursement to the publishers;
- (iii) providing responses to user queries on the search engine result page, also known as 'zero-click searches', without the user going to the publisher's website thereby depriving them of user traffic;
- (iv) requiring news publishers to conform to certain technological standards for their mobile websites; and
- (v) unilaterally and arbitrarily imposing terms of the agreements entered into with members of the Informant.

The CCI noted that the issue at hand pertained to practices regarding online general web search and online search advertising services, as was also the case in

earlier [Google Search Bias case](#). Accordingly, the CCI adopted the market delineations from the *Google Search Bias* case *i.e.* market for online general web search and market for online search advertising services.

Further, the CCI also included the market for digital advertisement intermediation services in its assessment, noting that it formed a part of the virtually integrated ecosystem of digital advertising. The service of online digital advertising intermediation services is required by news publishers to sell advertising space on their websites in order to reach out to the demand side of the market *i.e.* advertisers.

The CCI noted the high market share of Google in the delineated markets and the fact that such market share was stable over a period of time thus indicating that Google had become entrenched. Furthermore, the CCI noted the existence of network effects with both the delineated markets being interdependent thus increasing the value of the services offered by Google. Accordingly, the CCI held Google to be dominant in the delineated markets.

The CCI noted that the substance of the Informant's grievances related to the denial of fair share in digital advertising revenues and disclosure of inadequate information to reach a fair settlement regarding such revenues. In such context, the CCI observed that the alleged opacity on critical aspects such as data and audience management practices, and generation and sharing of revenue with publishers exacerbates the information asymmetry and is *prima facie* prejudicial to the interests of publishers. It was noted that this may lead to an adverse effect on the quality of services of the publishers thus leading to consumer detriment. Accordingly, the CCI directed that the imposition of unfair conditions as well as prices by Google is *prima facie* in violation of Section 4(2)(a) of the Competition Act, 2002 (**Act**).

The CCI also noted that the issue of scraping and displaying content as snippets without compensating the content creator assumes significance in light of increasing zero-click searches. It was observed that while snippets may help content creators to enhance their market reach, in the event a reader does not click on the snippet to log on to the website on account of the snippet providing information sufficient to address the user query, the advertisement revenue earning potential of the publisher gets limited. Further, while the advertisement revenue of a publisher may get limited in such a case, Google would continue to earn advertisement revenue on its result page as well as help Google enrich its search algorithm. The CCI observed the same to be *prima facie* in violation of Section 4(2)(a) of the Act on account of being unfair.

The CCI noted that Google requiring publishers to implement the Accelerated Mobile Pages standard or lose critical placement in mobile search, has revenue implications for the publishers. It was observed that Google restricting paywall options unless publishers rebuild their paywall and meter for the standard may amount to an unfair imposition on publishers thus meriting further examination. The CCI also noted that it needs to be examined whether Google imposes any discriminatory conditions or price on news publishers which would violate Section 4(2)(a) of the Act.

While passing the order, the CCI made a specific mention of ‘critical role played by news media in a well-functioning democracy’, and took note of the developments in France and Australia, where Google has been asked to enter into fair/ good faith negotiations with news publishers for paid licensing of content to address the bargaining power imbalance.

NCLAT upholds CCI’s order finding no abuse of dominance by Ola

The NCLAT *vide* [judgment dated 07.01.2022](#) dismissed appeals challenging the CCI’s order finding no abuse of dominance by Ola in [Cases No. 06 of 2015 and 74 of 2015](#). The informants before the CCI had alleged that Ola was abusing its dominant position by engaging in predatory pricing by offering discounts to customers and incentives to drivers with the sole intention to monopolize the market for radio tax services in Bengaluru.

Upholding the CCI’s finding that Ola was not a dominant entity in the market for radio taxi services, the NCLAT noted that Ola’s increasing market share and fleet size were not, by themselves, indicative of dominance. During the period of impugned conduct, Ola was facing competition in the market from established players such Meru and Fast Track while Uber had entered the market and was trying to establish its brand. The presence of Uber was specifically noted to have required Ola to calibrate and change its market strategy including those relating to price, in its bid to compete with Uber.

Further, the NCLAT did not find merit in the allegations made regarding the use of venture capital funding to provide discounts in a manner which was abusive of Ola’s dominance. The NCLAT observed that while below cost pricing was employed by Ola, the same was not predatory pricing with a view to dislodging any competitor from the market but towards establishing itself as an effective brand in addition to attracting new customers and gaining their confidence.

Lastly, the NCLAT did not find merit in the allegations regarding the Master Services Agreement entered into with the drivers, being anti-competitive and in violation of Section 3 of the Act. The NCLAT observed that Ola does not stand guarantee for loans for vehicles to be procured by the drivers and simply helps them source credit. Thus, there is no financial lock-in requiring drivers to only list on Ola. The agreement drivers have with Ola is entirely optional and does not in any way bind the driver to Ola’s network. Further,

the incentives provided to drivers are dynamic and not constant. Thus, the NCLAT rejected allegations that drivers were forced to not enter into any agreement with competitors of Ola and penalties were imposed upon them for refusal to accept ride orders in an anti-competitive manner.

CCI approves acquisition of Suez S.A.'s water technology solutions business in India by Veolia Environment

Vide [order dated 23.11.2021](#), the CCI approved the acquisition of French water and waste management solutions provider Suez S.A.'s water technology solutions business in India by Veolia Environment S.A. (**Veolia**), after a turbulent process including an email sent by Suez to the CCI trying to fend off the hostile takeover by Veolia, a rejected application by Veolia, and a yet to be concluded penalty process for gun-jumping for acquisition of 29.9% shareholding, prior to approval.

With respect to the substantive assessment of the proposed combination, the CCI noted that Veolia does not provide water technology solutions services in India and, thus, there would be no horizontal overlaps between Veolia and Suez S.A. requiring competition scrutiny. Further, the other product offerings of Veolia were also not observed to lead to vertical overlaps with Suez S.A.

The CCI also examined overlaps between New Suez's product offerings and those of the portfolio companies of the shareholders in New Suez *i.e.* Meridiam, Global Infrastructure Management LLC (**GIM**), Caisse des dépôts et consignations (**CDC**) and CDC's subsidiary CNP Assurances (**CNP**). On the basis of Materiality Thresholds (special rights, board representation, shareholding, structural/financial arrangements, etc.), the CCI noted that there were no overlaps between

Meridiam, GIM and CNP. While CDC was noted to have a common shareholding in Veolia and New Suez, the CCI appears to have been satisfied with the explanation that CDC employs internal processes which prevent any exchange of commercially sensitive information within all entities in which it holds joint controlling shareholding.

Accordingly, the CCI concluded that the transactions proposed are not likely to cause an appreciable adverse effect on competition and approved the acquisition.

CCI finds National Egg Co-operation Committee to be fixing prices, in contravention of the Competition Act

The CCI *vide* [order dated 14.01.2022](#) found the National Egg Co-ordination Committee (**NECC**) to be fixing prices, in contravention of the Act. The Informants alleged that, *inter alia*, NECC was fixing prices by way of its daily declared 'NECC Price' for geographical regions across the country, fixing prices without considering different qualities of eggs thus leading to lesser prices for eggs produced under higher standards, restricting production in order to maintain prices, and providing cold storage facilities to farmers in order to control and direct their movement to areas of high demand in order to maintain higher prices. An investigation was undertaken by the Director General (**DG**) pursuant to the CCI's order. DG found a case of contravention was made out against the NECC.

The CCI noted the WhatsApp conversations between NECC regional chapter members discussing prices, deposition statements of individuals admitting that they discussed prices, market dynamics such as certain regions like Ambala, Sangroor and Lucknow not determining their prices independently but following prices of other zones. On the basis of such evidences, the CCI concluded

that NECC determined prices of eggs across regions on a daily basis.

In its analysis, the CCI observed that price fixation of a product and dissemination of price information to the constituents with a view to only remove the information asymmetry that exists (particularly in an association of over 37,000 farmers), may not be always termed as anticompetitive. A case-by-case examination would be needed to assess whether the price fixation and dissemination of information was supported by an economic rationale. Further, providing a price that only acts as a benchmark or a mere suggestion would not be anticompetitive. This would help preventing farmers become the main shock absorber in the supply chain as regards market risks such as price volatility or prolonged periods of low prices. However, the price of any product should be determined on the basis of market forces and not fixed arbitrarily.

The CCI noted that although no direct evidence of imposition of prices and collection of penalties was available, the three-tier structure of NECC coupled with factors such as members being aware of the requirements to follow NECC prices and the existence of check-points to ensure compliance led to such prices being imposed. Thus, price determination was not in the control of farmers and the benchmark price was not suggestive but mandatory.

The CCI noted NECC sought to limit and control the production/supply of eggs by directing and facilitating early culling of birds. The CCI observed that while there may be valid reasons for early culling of birds such as fixed costs exceeding reduced revenue inflow on account of seasonal factors, these are independent decisions to be taken by farmers based on their risk assessment and not upon directions or advisories issued.

However, the CCI rejected the allegation that cold storage facilities were being provided to farmers by NECC in a bid to control and direct the channelling of eggs to high demand markets, in an uncompetitive

manner. The CCI noted that eggs are perishable commodity which also face seasonal market changes thus leading to fluctuations in the demand for eggs. Further, there may be other factors such as cultural factors which affect the demand for eggs. The absence of cold storage facilities would lead to a loss of goods on account of spoilage. Thus, the CCI concluded that in the absence of evidence that providing cold storage facilities was done with object of distorting prices, NECC providing such storage cannot be said to be in contravention of the Act.

Thus, in conclusion, the CCI observed that NECC sought to control the price of eggs without giving freedom to farmers to decide their own prices. However, the CCI refrained from imposing a penalty and directed NECC to cease and desist from such conduct. Further, NECC was directed to (i) give sufficient disclaimers that its prices are only suggestive, (ii) institute a competition compliance program, and (iii) file a competition compliance report with the CCI.

CCI fines four shipping lines in the global ro-ro cartel

The CCI *vide* [order dated 14.01.2022](#) found Nippon Yusen Kabushiki Kaisha (**NYK**), Kawasaki Kisen Kaisha Ltd. (**K-Line**), Mitsui O.S.K. Lines Ltd. (**MOL**) and Nissan Motor Car Carrier Company (**NMCC**) to have formed a cartel in contravention of Section 3(3) read with Section 3(1) of the Act.

The proceedings were initiated before the CCI upon NYK filing a leniency application admitting to colluding with K-Line, MOL and NMCC in respect of providing maritime motor vehicle transport services to automobile OEMs for certain specific trade routes. Upon finding that a *prima facie* case of cartelization was made out, the CCI directed an investigation into the disclosed conduct. Subsequently, MOL and NMCC also filed a joint leniency application. However, the CCI clarified that, as under the Act, a joint

application for leniency cannot be filed. Accordingly, MOL and NMCC filed individual leniency applications.

K-Line chose to contest the matter on the ground of jurisdiction and lack of an appreciable adverse effect on competition on account of the automobiles being exported out thus resulting in no harm to consumers in India. To this, the CCI clarified that the scope of ‘consumers’ under the Act included both ‘ultimate consumer’ and all ‘intermediate consumers’. Since the OEMs were availing of the shipping lines’ services for transporting vehicles out of India, such OEMs located in India would be considered consumers. Further, the ‘export’ defence was rejected on account of the fact that the export of the vehicles being undertaken was by the OEMs whereas the shipping lines were providing the service of maritime transport. Thus, since the shipping lines were not exporting their services, the defence provided under Section 3(5) could not be allowed.

Furthermore, on a separate note, the CCI also clarified that the presence of a formal tendering process is not necessary to establish a contravention of Section 3(3)(d) of the Act which prohibits bid rigging or collusive bidding.

The CCI noted the evidence on record including communications discussing allocation of tenders amongst the shipping lines, existence of meetings amongst officials of the shipping lines and sharing of freight rates amongst the shipping lines. NYK received a full waiver on the penalty payable since the CCI’s *prima facie* view of contravention in the instant case was formed on the basis of disclosures made by NYK, in addition to its continued cooperation. MOL and NMCC were provided the maximum possible reductions of 50% and 30% available under the regulations for the second and third leniency applicants.

Madras High Court interprets the scope of CCI’s General

Regulations in connection with the tyre manufacturers cartel

In a significant judgement interpreting the scope of the Competition Commission of India (General) Regulations, 2009 (**General Regulations**), a division bench of the Madras High Court *vide* its [order dated 06.01.2022](#) dismissed a writ appeal seeking to quash a Section 26(1) order of the CCI on the grounds of non-compliance with the provisions of the General Regulations.

The order under challenge, directing an investigation against various tyre manufacturing companies for alleged cartelisation was passed by the CCI in 2014 on the basis of a Reference received from the Ministry of Corporate Affairs (**MCA**).

In 2015, the said order was challenged before a single judge of the Madras High Court on the grounds that the CCI while passing the said order had completely disregarded the provisions of the General Regulations. It was argued that the Reference received from the MCA was not in the required format and the Secretary, CCI instead of directing the MCA to cure the said defects, had improperly placed it before the CCI.

However, the single judge upheld the validity of the Section 26(1) order passed by the CCI on the basis of the reference received from the MCA *vide* its [order dated 06.03.2018](#). On appeal against the said order, a Division Bench of Madras High Court relying upon the Supreme Court’s seminal 2010 judgement in [CCI v SAIL](#), noted that an order under Section 26(1) of the Act is a direction simpliciter to cause an investigation in the matter.

The Bench then observed that in the present case, since the Section 26(1) order was preliminary in nature & did not affect the interests of the parties, any interference by the writ court at this stage would allow the parties to escape from the investigation itself, which would subvert the goals of the Act.

Dealing with the substantive issues of non-compliance with the General Regulations, the Bench noted that Regulation 15 of the General Regulations dealing with procedure for scrutiny of information or reference cannot be read in isolation keeping aside Regulation 40 and Section 15(c) and Section 19 of the Act.

The Court held that based on Regulation 40 (dealing with the effects of non-compliance), even the failure to comply with any requirement of the General Regulations shall not invalidate any proceeding. Only in two situations, namely, if there is an irregularity or non-compliance of the procedures affecting the merits of the case, or, resulting in miscarriage of justice alone, can non-compliance with the General Regulations render the proceedings invalid.

In the present case, since no case of any prejudice was made by any of the parties, the Division Bench dismissed the writ appeal.

Aggrieved by the said dismissal, multiple Special Leave Petitions were filed in the Supreme Court. However, the apex Court noted that the CCI has completed its investigation in the matter, a final order has also been passed in 2018 and kept in a sealed cover, as per the directions of the Madras High Court. Accordingly, considering the stage of the proceedings, the Court *vide* its [order dated 28.01.2022](#) dismissed the said SLPs while noting that the parties were at liberty to pursue their remedies in accordance with law, and all the rights and contentions of the parties have been kept open to be pursued, post the final order of the CCI is released.

Consequently, the final order of the CCI passed in 2018, was released on 2nd February 2022, finding the tyre manufacturing companies guilty of cartelization. The decision will be covered in the next edition.

CCI approves Phoenix Parentco's acquisition of 100% equity in Parexel

The CCI *vide* [order dated 25.10.2021](#) approved Phoenix Parentco's (**Phoenix**) acquisition of 100% of the equity shareholding of Parexel International Corporation (**Parexel**).

While the approval was a shoo-in, the order is notable for the clarity provided on the issue of computation of intra-group turnover when assessing whether the thresholds have been breached. Parexel submitted that it was mostly engaged in intra-group activities, where almost all its turnover is generated through sale of its services and products to its overseas group entities. Therefore, it was further submitted by Parexel that when assessing the applicability of the *de minimis* exemption, intra-group turnover should not be included.

Considering the said submissions, the CCI delineated two issues for consideration: whether

- (I) turnover originating from outside India and terminating in India (**Import Turnover in India**); or
- (II) intra-group turnover originating from India and terminating outside India (**Intra-Group Export Turnover**) should be excluded for the purpose of testing the *de minimis* exemption threshold.

The CCI disagreed with the submission made by the parties and noted that with regards to the Import Turnover in India, these transactions essentially represent the value of business relatable to India. Accordingly, the computation of turnover would warrant *inclusion* of such revenue.

On Intra-Group Export Turnover, the CCI observed that when an overseas group entity makes further supply of these services (supplied to it under intra-group export) outside India, the turnover relating to such

subsequent sale is not counted as turnover in India. If one were to then also exclude Intra Group Export Turnover, then the economic value addition generated from India goes unaccounted for. Therefore, the CCI held that intra-group turnover cannot be excluded mechanically, and one would have to examine the location of the parties and the scope of acquisition while making a determination on its inclusion.

Madras High Court rules that the CCI has the power to probe a state owned generation and distribution company

The Madras High Court vide its [order dated 22.12.2021](#) dismissed a writ petition filed by the Tamil Nadu Generation and Distribution Corporation Ltd. (**TANGEDCO**) against a CCI order directing an investigation against TANGEDCO for abusing its dominant position by imposing discriminatory conditions in the sale of electricity.

The investigation in this case was initiated when an information was filed alleging that TANGEDCO was abusing its dominant position by shutting down power distribution for only 2-3 hours in Chennai, compared to up to 14-16 hours in other districts of Tamil Nadu. Consequently, industries outside of Chennai were at a competitive disadvantage as they had to rely on diesel run electricity generators to operate, which escalated their cost of production, making their products uncompetitive with similar products manufactured in Chennai.

The CCI while forming its prima facie opinion and directing the DG to investigate the said allegations also rejected TANGEDCO's arguments that the CCI did not have jurisdiction to entertain any such complaint against it considering the overriding effect of the Electricity Act, 2003 (**Electricity Act**). Aggrieved by the said order of the CCI,

TANGEDCO filed a writ petition in the Madras High Court.

Dismissing the said writ petition, the Court noted that while the Electricity Act did have a prevailing effect over the Act since it was a special legislation, it did not provide any power to the Tamil Nadu Electricity Regulatory Commission to conduct an investigation. Specifically, the Regulatory Commission has not been constituted to investigate allegations of abuse of dominant position, which is a specific provision under Section 4 of the Act.

The Court also analysed the Supreme Court 2018 judgement in [CCI v. Bharti Airtel Limited and Ors.](#) to note that when allegations in an information reveal practices contrary to the Act, the CCI is empowered to investigate. Therefore, the allegations in the present case are to be investigated by the CCI as per the provisions of the Act.

The Court further held that TANGEDCO was only called to furnish information and documents in order to aid the investigation of the CCI. When the CCI has not yet formed a final opinion, any challenge to its authority at this stage was to be considered premature. The Court concluded by noting that TANGEDCO was at liberty to submit its explanations or objections to the CCI and should co-operate with the investigation.

CCI penalises Investcorp India for failing to notify its acquisition

In a fairly significant order that arguably changes the CCI's approach to the companies that need to be taken into account while assessing thresholds, the CCI vide [order dated 17.12.2021](#) imposed a penalty of INR 20 Lakh on Investcorp India Asset Managers Private Limited (**Investcorp**) for failing to notify its acquisition of real estate fund management and private equity fund management businesses of IDFC Alternatives.

The CCI analysed and nature of transaction and observed that pursuant to the said transaction, Investcorp had become the manager of the concerned venture capital fund and alternative investment funds of IDFC Alternatives. Under such pooled investment schemes, subscribers give authority to the investment managers to conduct the operations of the fund. The investment manager of the fund invariably enjoys control over the portfolio entities where the shareholding and/or contractual rights of the fund is such as to enable material influence or higher degree of control over the given portfolio entity.

As acquisition of control is one of the forms of entering into a combination under Section 5 of the Act, in case of the acquisition of any investment management businesses, the value of assets and turnover of the controlled portfolio entities would also be relevant for the purpose of computing thresholds under Section 5 of the Act.

The CCI also rejected the argument of Investcorp that assets and turnover of the investee companies should be considered only on a proportionate basis, i.e. to the extent of shareholding and control over the target entity. The CCI noted that Section 5 does not operate on the basis of proportionality. Even if an enterprise acquires material influence (which is the starting threshold of control) over another entity, whole financials of the target enterprise would be taken into consideration.

The decision is notable as no prior order of the Commission had treated portfolio entities as 'Targets' for the purposes of assessing whether the financial thresholds had been breached, but only for the purposes of competition assessment. The CCI imposed a penalty of Rs 20 lakhs and closed the matter.

CCI orders investigation against Chandigarh Housing Board for alleged abuse of dominance

The CCI vide [order dated 13.01.2022](#), ordered an investigation against the Chandigarh Housing Board (CHB) for alleged abuse of dominance. The Informant alleged that CHB was abusing its dominance by imposing unfair terms and clauses on allottees in its housing schemes, relating to (i) imposition of high interest for revival of registration in case of delayed payment without a corresponding obligation on CHB, (ii) charging interest on instalments during the period of construction in an unfair and arbitrary manner, (iii) arbitrary levies of interest, and (iv) non-disclosure of date of possession in order to avoid liability in case of any delay.

The CCI noted that the real estate market can be broadly classified into residential and commercial segments. It noted that the factors considered by a consumer while buying a residential unit are different from those considered while buying a commercial unit. Further, both the intended usage and pricing of a residential and commercial flat is different. The CCI also noted that a consumer intending to buy a flat in a particular area may not prefer to purchase the same in an adjacent area on account of difference in regulatory authorities, civic amenities, personal preferences, etc. Since the Union Territory of Chandigarh was observed to possess distinct market conditions, the CCI delineated the relevant market as the '*market for the provision of services for development and sale of residential flats in Chandigarh*'.

The CCI noted that since the consumers of residential units/flats in Chandigarh were dependent on CHB for allotment of residential flats due to the lack of private developers operating in Chandigarh, which provided CHB a competitive edge and statutory monopoly in the market. Accordingly, CHB was held to be *prima facie* dominant in the relevant market.

The CCI observed that by not disclosing the date of handing over of possession of the residential flats to the allottees, while

simultaneously subjecting them to the terms of paying an interest in the event of a delay in making the payment of the instalments, CHB had *prima facie* imposed unfair conditions on the consumers. Further, the levy of interest on delay of even one day in credit of required instalments by the CHB is violative of the provisions of the Act. Accordingly, an investigation against CHB was ordered by the CCI.

CCI orders investigation against IREL India for alleged abuse of dominance

The CCI vide [order dated 03.01.2022](#) ordered an investigation against IREL (India) Ltd. for alleged abuse of dominance. The Informant alleged that IREL abused its dominance by (i) indulging in prohibitive price increases for sillimanite, (ii) following discriminatory pricing against the interests of Micro, Small and Medium Enterprises (**MSMEs**), and (iii) forcing consumers to accept arbitrary quantities determined by it.

The CCI noted that underground mined Sillimanite or Andalusite cannot be considered as a viable alternative for beach sand Sillimanite, since the physical properties of both the materials are different and one cannot replace the other in the manufacturing of refractory for use in the metal and alloy industry and the ceramic and foundry industry. Further, the CCI noted that by virtue of IREL being the only supplier of sillimanite within India, it was clearly dominant.

The CCI noted that IREL was charging the domestic MSMEs differently from the foreign companies / MNCs, with the MSMEs being charged INR 14,000 per metric tonne while certain foreign entities were noted to have been charged INR 11,000 per metric tonne. The CCI concluded that such conduct seemed to be *prima facie* indicative of abuse of dominance by IREL. Accordingly, the CCI directed the DG to cause an investigation into the matter.

CCI approves Delhivery's acquisition of FedEx India's operating assets

The CCI vide [order dated 23.11.2021](#) approved Delhivery Limited's (**Delhivery**) acquisition of the operating assets pertaining to the domestic business of FedEx Express Transportation and Supply Chain Services (India) Private Limited (**FedEx India**) and a FedEx group company TNT India Private Limited.

Overlaps in the broad relevant market *i.e.* the market for overall logistics service in India, as well as narrow relevant markets such as markets for freight services in India, market for warehousing service in India and market for third party logistics services, were identified and assessed. The CCI noted that the combined market share of the parties in such aforementioned markets is in the range of 0-5% and other large players such as Mahindra Logistics, Blue Dart, amongst others, operated in such markets. It was noted that the combined market share of the parties in the market for express services was in the range of 15-20%, with all the sub-segments of express services also having combined market shares between 5-20%.

It was further noted that the incremental market share in the various sub-segments of express services was relatively low on account of Delhivery being a stronger player in the domestic markets while FedEx is a stronger player in the international markets segment. Additionally, these are also subject to competitive constraints posed from significant competitors such as Blue Dart, DTDC, ATS (Amazon), Ekart (Flipkart), amongst others.

Accordingly, the CCI concluded that the acquisition was unlikely to cause appreciable adverse effect on competition and approved the same.

Supreme Court upholds CCI's jurisdiction in examining the distribution of Mizoram state's lottery

The Supreme Court vide [judgment dated 19.01.2022](#) upheld the jurisdiction of the CCI to inquire into allegations anti-competitive conduct in *res extra commercium* businesses i.e. businesses which may not be the object of private rights.

Information was filed before the CCI impugning the tendering process for appointment of selling agents and distributors for lotteries organized in the State of Mizoram. An opposite party being investigated for alleged bid rigging filed a writ petition before the Gauhati High Court challenging the proceedings before the CCI.

In 2014, the Gauhati High Court had held that the CCI did not have the jurisdiction to look into the matter on account of lottery being akin to a gambling activity thus being

covered under the doctrine of *res extra commercium*, whereas, jurisdiction conferred upon the CCI as under the Act is only in respect of legitimate trade and goods i.e. *res commercium*.

In appeal, the Supreme Court set aside the order of the Gauhati High Court, observing that lotteries may be regulated activity and *res extra commercium*, however, that would not take away the aspect of anti-competitive conduct in the context of the business related to distribution of lotteries. The Supreme Court observed that a liberal interpretation had to be given to the expansive definition of 'service' under Section 2(u) of the Act, and thus, distribution of lotteries fell within the definition of 'service'. Therefore, if in the tendering process there is an element of anti-competitive conduct which would require investigation by the CCI, such investigation cannot be prevented under the pretext of the lottery being regulated under the Lotteries (Regulation) Act, 1998 or being *res extra commercium*.

This newsletter is only for general informational purposes, and nothing in this newsletter could possibly constitute legal advice (which can only be given after being formally engaged and familiarizing ourselves with all the relevant facts). However, should you have any queries, require any assistance, or clarifications with regard to anything contained in this newsletter (or competition law in general), please feel free to contact the Competition Law Team at competitionlaw@luthra.com or any of the contacts listed below. © L&L Partners 2022. All rights reserved.

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