



**THE PULSE –
THE QUARTERLY
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COMPETITION LAW**

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INTRODUCTION

India's economy can be considered equivalent to heartbeats; it's been characterized by steady ebbs and flows. With the launch of Reliance Jio (which disrupted the Indian telecom market), and various initiatives taken by the government (such as 'Digital India Campaign' and 'BharatNet', to bridge the digital divide and involve rural areas in its digital inclusion efforts), digital resources are now available to even remote households in India. Similarly, the Competition Commission of India ("CCI"), while having completed a decade and half of governance, has stepped out of its nascency and has proved its prowess and agility by adapting to the challenges posed by the 'Information Age' by taking decisions involving complex issues in emerging sectors such as digital markets. The buzz word **Big Tech** and terms such as **deal values thresholds** have become a part of the daily speak of competition regulators and lawyers, alike.

At this critical juncture, **INDUSLAW** hereby presents its inaugural edition of '**The Pulse**', a quarterly round-up of the latest developments in the Indian competition law space. As the name suggests, this short yet extensive compilation of updates will help you monitor the pulse of the competition law space in India without having to sift through the data mine of various courts and tribunals. This volume covers updates ranging from the key decisions made by the CCI, the National Company Law Appellate Tribunal ("**NCLAT**"), a couple of High Courts, as well as regulatory and institutional updates.

Separately, for our friends who appreciate the crisp and the sweet, a ready reckoner of the noteworthy developments is set out in the flowchart on the next page.



SUMMARY OF KEY DEVELOPMENTS IN Q1 OF FY 2024-2025

APR – JUN 2024

March 12

The CCI approves the merger of fintech company Garagepreneurs' Internet with Northeast Small Finance Bank.

March 12

The CCI approves the acquisition of a stake in Asian Institute of Nephrology and Urology by TPG Growth and Waverly.

April 2

The CCI approves IndoEdge's acquisition of stake in MG Motors.

April 2

The CCI approves Piramal Alternatives Trust's investment in Annapurna Finance.

April 26

The Delhi High Court sets aside CCI order directing Geep to pay interest on penalty amount.

April 22

The CCI launches a market study on artificial intelligence and competition.

April 5

The NCLAT reduces penalty imposed on Godrej and Boyce in relation to the dry cell batteries case.

April 5

The CCI dismisses information filed against Covai Property and Ozone Urbana for indulging in alleged anti-competitive practices.

April 30

The Madras High Court quashes CCI Order investigating and impleading MRF for cartelization.

May 6

The CCI dismisses information against Maruti Suzuki for imposing unfair pricing on its customers.

May 10

The CCI updates its confidentiality regime.

May 20

The CCI celebrates its 15th Annual Day commemoration.

June 24

The CCI dismisses information filed against Google for providing preferential treatment to Truecaller.

June 8

Appointment of Mr. Inder Pal Singh Bindra as the new Secretary of the CCI.

June 6

The CCI published the draft amendments to the CCI (General) Regulations, 2009.

May 29

The CCI dismisses information filed against Department of Atomic Energy and IREL alleging abuse of dominant position.

OVERVIEW OF ENFORCEMENT CASES

Decisions by the CCI:

In the first quarter ("Q1") of the financial year ("FY") 2024-25, the CCI declined to investigate 10 information filed by the informants alleging abuse of dominance and anti-competitive agreements. A summary of the noteworthy cases is set out below:

CCI dismisses information filed against Covai Property Centre and Ozone Urbana for indulging in alleged anti-competitive practices¹:

The CCI dismissed an information² filed against Covai Property Centre (India) Private Limited ("**Covai**"), Covai Senior Citizen Services Private Limited ("**Covai Services**") and Ozone Urbana Infra Developers Private Limited ("**Ozone**") alleging: (i) imposition of vertical restraints such as tie-in; and (ii) abuse of dominant position.

The CCI, relying on publicly available data, observed that apartments catering to the needs of retired/senior people were emerging as a niche market since a person buying such apartments would focus on amenities such as 24*7 medical emergency facility, food facility/community kitchen, geriatric gyms, etc. These characteristics distinguished such apartments from other apartments that were not created focusing on the needs of retired/senior people. Further, the CCI noted that the projects fall within the Bangalore Metropolitan Region ("**BMR**"), which is distinct from other neighboring areas. Hence, the CCI was of the prima facie view that the relevant market in the present case would be *"the market for provision of services for development and sale of apartment to cater to the needs of senior citizens in the BMR"* ("**RM**").

The CCI observed that in the BMR, apart from Ozone there are many other real estate developers, offering similar services. Hence, Ozone does not appear to hold a position of strength in the RM and the examination of allegations pertaining to abuse of dominance is not warranted. Regarding allegations of imposition of vertical restraint, the CCI noted that for the applicability of the provision, the entities in question must operate at different stages or levels of the production chain. In the present case, the alleged tying agreement was between an enterprise and an end consumer.³ Hence, this was not within the scope of the CCI's review and the CCI dismissed the information.

View: *The CCI continues to follow a consistent approach while deciding allegations of vertical restraint being*

*imposed on end-consumers. According to the CCI, these do not fall under the purview of the Competition Act, 2002 ("**Act**"), and therefore, the CCI has been dismissing such information.*

CCI dismisses information filed against Maruti Suzuki for imposing unfair pricing on its customers⁴:

The CCI dismissed an information⁵ filed against Maruti Suzuki India Limited ("**Maruti**"), alleging Maruti's abuse of its dominant position through imposition of unfair and unethical pricing strategy with respect to 'Jimny's 'Thunder' model. Allegedly, Maruti generated an artificial hype in the market that there would be approximately 8 to 10 months of waiting for the 'Jimny' model resulting in customers buying the car in haste. However, soon after its launch, the 'Thunder' variant was also introduced wherein Maruti: (i) offered the car at a discounted price; and (ii) provided certain accessories along with the car on a complimentary basis, which the customers previously had to pay for separately. Further, an extended warranty was also offered for free by many dealers at a later stage which had to be separately purchased by the initial customers.

The CCI noted that the informant did not define any 'relevant market' for the purposes of assessment. However, based on its previous decisions and the characteristics of the car model in question, the CCI noted that in 2023, the market share of Maruti, in the broad market for *"passenger vehicle segment in India"* is 41.6%, whereas Maruti's market share in the narrow market of the *"Sports Utility Vehicle ("**SUV**") segment of passenger vehicles in India* is only 21.5%. Hence, the CCI observed that Maruti was not a dominant player in

1. Case No. 30 of 2023, *Buchi Ramarao Valury vs Covai Property Centre Private Limited & Ors.*, order dated April 5, 2024, available at: <https://www.cci.gov.in/antitrust/orders/details/1108/0>.
2. The information was filed by an individual named Mr. Buchi Ramarao Valury, who is a resident of one of the properties developed by Ozone. He alleged that Covai, a company providing consultancy services and care in terms of designing, building and operating retirement communities and Ozone, the developer of the property where the informant resided, had entered into a tie-in arrangement which required the informant to mandatorily avail catering and housekeeping services provided by Covai's subsidiary, Covai Services. Further, there were unilateral changes in allotment of housekeeping staff and increase in monthly maintenance charges under the service agreement between the informant, Covai and Covai Services.
3. It has been alleged that by virtue of the tie-in arrangement between Covai and Ozone, the informant has been forced to accept catering and housekeeping services provided by Covai Services, with whom the informant was required to execute a service agreement.
4. Case No. 43 of 2023, *Harmit Ahuja vs Maruti Suzuki India Limited.*, order dated May 6, 2024, available at: <https://www.cci.gov.in/antitrust/orders/details/1113/0>.
5. The information was filed by Harmit Ahuja, an individual and a customer of Maruti who purchased 2 Jimny Alpha variants.

narrow market of “SUV segment of passenger vehicles in India”. The CCI further observed that the informant’s allegations regarding product pricing were a private contractual dispute and did not qualify as a competition issue under the Act.

View: *The CCI has made it clear that once a buyer purchases a product from a seller at a given price, it cannot insist on availing the benefit of any future discount which may be offered on such a product by the seller. Additionally, the CCI took a firm stance on not considering inter-se disputes as a competition law concern.*

CCI dismisses information filed against Department of Atomic Energy and IREL⁶:

The CCI dismissed an information⁷ filed against the Government of India (“**Gol**”) through the Department of Atomic Energy (“**DAE**”) and IREL (India) Ltd. (“**IREL**”), alleging abuse of dominant position. Allegedly, the informant was permitted by the DAE to set up a plant to process columbite and tantalite ores to produce niobium and tantalum products, which generates uranium bearing leach residue (“**ULR**”). In relation to this, the informant and IREL executed certain off-take agreements, basis which IREL was collecting and disposing safely the ULR produced in the informant’s plant. However, in February 2017, the informant applied for the renewal of the off-take agreement which was allegedly rejected by IREL: (i) without stating any reasons; (ii) applying the non-renewal retrospectively; and (iii) without any fault of the informant.⁸

Aggrieved, the informant alleged that DAE and IREL abused their dominant position, in their respective functions, in the “market for disposal of ULR produced during the processing of columbite and tantalite ores in India” by: (i) arbitrarily refusing to renew the off-take agreement; (ii) arbitrarily foreclosing the market for the informant; and (iii) following discriminatory practices by: (a) not granting import license to the informant but granting the same to other similarly placed enterprises; and (b) foreclosing the market for the informant but allowing public sector units to carry out the same activities.

The CCI observed that a cumulative reading of: (i) the Gol (Allocation of Business) Rules 1961, which assigns responsibilities to DAE, on behalf of Gol in relation to the prospects of atomic energy; and (ii) the definition

of ‘enterprise’ under the Act, DAE was exempted from the definition of ‘enterprise’ in terms of provisions of the Act. Accordingly, its conduct was not subject to scrutiny under the Act. In relation to IREL, the CCI noted that IREL has no role to play in renewal of the off-take agreement, rejection of import licenses, and non-approval of an alternate disposal plan. Therefore, no *prima facie* case could be made out either against DAE or IREL and the CCI dismissed the information.

View: *The CCI’s observation is in line with the narrow exemption provided from the purview of the Act to the entities/ government departments carrying out sovereign functions on behalf of the government including all government activities pertaining to atomic energy, currency, defence and space.*

CCI dismisses information filed against Google for providing preferential treatment to Truecaller⁹:

The CCI dismissed an information filed against Google India Private Limited (“**Google**”) alleging that Google was abusing its dominant position by granting exclusive access to the application ‘*Truecaller*’, enabling it to share private contact information of users while prohibiting other applications from doing the same. Hence, Google was giving preferential treatment to Truecaller owing to their commercial arrangements and distorting the market for caller ID and spam protection applications thereby providing a monopoly space to Truecaller.

The informant claimed the caller application, preloaded on several Android smartphones, uploads all user contacts and uses Google’s Application Programming Interface (“**API**”) for data harvesting even after its ban. This API is not made available to other applications. Google *inter alia* argued that its play store policies prohibit unauthorized publication or disclosure of users’

6. Case No. 33 of 2023, *Metallurgical Products India Private Limited vs Government of India through the Secretary, Department of Atomic Energy and Ors.*, order dated May 29, 2024, available at: <https://www.cci.gov.in/antitrust/orders/details/1115/0>.

7. The information was filed by Metallurgical Products India Private Limited, a private limited company, engaged in the business of production/processing/conversion of Columbite and Tantalite ores to produce and market niobium and tantalum products, from its manufacturing facility located in MIDC-Taloja, Maharashtra.

8. IREL continued to lift the ULR from the informant’s premises even during periods when the off-take agreement had expired and was pending renewal. The informant had already presumed the renewal and considered the delay merely on account of routine procedure..

9. Case No. 03 of 2023, *Ms. Rachna Khaira vs Google India Private Limited*, order dated June 24, 2024, available at: <https://www.cci.gov.in/antitrust/orders/details/1118/0>.

non-public contacts and that Truecaller's application on Google's play store complies with these policies. Additionally, regarding the contention on data harvesting, Google argued that the informant is merely referring to a policy change and not a ban on the authorized collection of user phone book data.¹⁰ In relation to commercial agreements between Google and Truecaller through Google cloud computing services and ad services, it was observed by the CCI that none of the arrangements contain any exclusivity provisions or any contingency clauses relating to the sharing of non-public contacts.

The CCI, relying on its previous decisions¹¹ identified the relevant market as the "market for app store for Android smart mobile OS in India" and held that Google was dominant in this relevant market. In terms of Google's conduct, the CCI noted that the existence of other caller ID and spam protection applications on Google's play store, providing the same service and undertaking the same function as Truecaller, indicates that there is no exclusive treatment for Truecaller. The CCI also noted that none of the arrangements between Google and Truecaller through Google cloud computing services and ad services contain any exclusivity provisions or any contingency clauses relating to the sharing of non-public contacts. In relation to the allegations regarding data harvesting, the CCI observed that the informant did not place any material on record to establish that such policy change has granted any competitive advantage to Truecaller over its rivals. In the absence of any cogent evidence being placed on record to prove any preferential treatment by Google, the CCI dismissed the information.

Decision by the NCLAT:

The NCLAT reduces penalty imposed on Godrej¹²:

Godrej and Boyce Manufacturing Co. Ltd. ("**Godrej**") filed an appeal against an order passed by the CCI in the dry cell battery case ("**Impugned Order**") for indulging in cartelisation¹³, on the limited point of: (i) seeking waiver on the interest accrued on the penalty imposed; or (ii) alternatively a reduction in the penalty amount itself.

NCLAT based on the facts of the Impugned Order and its own decision in relation to Geep Industries Pvt. Ltd. ("**Geep**")¹⁴ (that was a co-accused in the dry cell battery case and had also been penalized by the CCI under a separate decision), noted that there were similarities in the economic standing of both Godrej and Geep. NCLAT

noted that both Godrej and Geep were small players in the dry cell market and had insignificant market shares¹⁵ with no bargaining/negotiating leverage compared to Panasonic Energy India Co. Ltd. ("**Panasonic**"). Further, Godrej had in fact suffered losses in this business, whereas Geep although being in loss initially was in profit in later years. Hence, (i) given the similar economic placement of Godrej and Geep; (ii) considering the fact that the NCLAT had previously reduced Geep's penalty from 4% of the turnover to 1% of the turnover; and (iii) noting that while in actual rupee terms the 4% penalty charged from Godrej was far less than the 1% penalty amount paid by Geep, it could not be ignored that Geep was in profits in later years, the NCLAT decreased the penalty imposed upon Godrej to 2% of the turnover, while maintaining the quantum of penalty imposed upon its officials. However, the NCLAT did not waive the interest on the penalty accrued since in its opinion, pendency in appeal and continuation of stay could not be considered as a ground for waiver. The NCLAT also clarified that the reduced penalty in this case is owing to the peculiar facts of this case and should therefore, not be treated as a precedent.

Decisions by the High Courts:

Delhi High Court allows writ petition by Geep and sets aside CCI order directing Geep to pay interest on penalty amount¹⁶:

The Delhi High Court allowed the writ petition filed by Geep challenging the CCI order¹⁷ directing it to deposit

10. The new policy merely introduced a "safety section" in Google's play store intended to help users "understand the data an application collects or shares, if that data is secured, and additional details that impact privacy and security."

11. Case No. 39 of 2018, *Umar Javeed & Ors. vs Google LLC & Anr.*, order dated October 20, 2022, available at: <https://cci.gov.in/antitrust/orders/details/1070/0> and Case Nos. 07 of 2020, 14 of 2021 and 35 of 2021, *XYZ vs Alphabet Inc. & Ors.*, order dated October 25, 2022 available at: <https://www.cci.gov.in/images/antitrustorder/en/order1666696935.pdf>

12. Competition Appeal (AT) No. 18/2019, *Godrej & Boyce Manufacturing Co vs Competition Commission of India and Ors.*, order dated April 5, 2024.

13. *Suo Motu Case No. 03 of 2017, In Re: Anticompetitive conduct in the Dry-Cell Batteries Market in India*, order dated January 15, 2019, available at: <https://www.cci.gov.in/images/antitrustorder/en/0320171652434156.pdf>. While the CCI granted 100% immunity to Panasonic including its office bearers for disclosing the existence of the cartel under the leniency regulations, it imposed the following penalties: (a) 4% of Godrej's turnover for each year of the continuance of the cartel; and (b) 10% of the average income of Godrej's office bearers earned during the preceding 3 FYs.

14. Competition Appeal (AT) No. 87/2018, *Ms. Pushpa M. vs Competition Commission of India and Ors.*, order dated March 31, 2023.

15. *Eveready Industries India Ltd, Indo National Ltd and Panasonic* which form a part of the primary cartel members, controlled the market with combined market share of 88% as against miniscule 2% market share of Godrej.

16. W.P.(C) 10332/2023, *Geep Industries (India) Pvt. Ltd. & Ors vs Competition Commission of India*, order dated April 26, 2024, available at: https://dhccaseinfo.nic.in/jsearch/judgement.php?path=dhc/SMP/judgement/26-04-2024/&name=SMP26042024CW103322023_190400.pdf.

17. Order dated July 18, 2023.

interest on the penalty amount (imposed regarding cartelization in the dry cell batteries market). Geep argued that interest on a penalty amount could only be levied in accordance with the Competition Commission of India (Manner of Recovery of Monetary Penalty) Regulations, 2011 ("**2011 Regulations**"), and the CCI could not direct payment of interest on a delayed payment of penalty without following the procedures set under the 2011 Regulations.

In the instant case, the CCI had issued a demand notice to Geep after the pronouncement of the judgment by NCLAT¹⁸, but directed it to pay the interest starting December 10, 2018, till the date on which the penalty amount was paid. The crux of Geep's contention was that, for any interest to be accrued, the CCI ought to have issued the demand notice after the expiry of the period mentioned in the CCI order. Since the CCI failed to follow the procedure, it did not have the authority to direct Geep to pay the interest.

The Delhi High Court upon perusal of the 2011 Regulations clarified that interest on penalties did not accrue from the date of the CCI's initial finding of infringement. Instead, interest would only accrue after the CCI served a demand notice to a party. Accordingly, the Delhi High Court set aside the CCI's order levying interest on the delayed payment of penalty.

***View:** This ruling sets out in detail the timing and procedure of when the CCI can levy interest on the penalty imposed by it. This will have a significant impact on the enterprises with ongoing/future appeal proceedings, since where the base penalty is large, the timing of levying interest can substantially increase the amount required to be paid by the enterprises.*

Madras High Court quashes CCI order investigating and impleading MRF for cartelization¹⁹:

The Madras High Court allowed the writ petition filed by MRF Ltd. ("**MRF**") and quashed the CCI investigation against it, citing a lack of prior notice before impleading it as a party under investigation. MRF had filed a writ petition challenging its impleadment in an investigation directed by the CCI ("**Investigation Order**") into an alleged cartel amongst tyre manufacturers in tenders for steel radial tyres.²⁰ As such, the Investigation Order dated November 1, 2019, was passed based on a complaint from the Directorate of State Transport, Haryana against only JK Tyres & Industries Limited.

Pursuant to the Investigation Order, the Director General, CCI ("**DG**") conducted a detailed investigation and issued notices to third parties like MRF to seek various

particulars. The DG, subsequently sent a note to the CCI proposing to investigate other tyre manufacturers including MRF and others such as CEAT Ltd., Birla Tyre Ltd., Michelin Tyre Ltd., Continental AG, Apollo Tyres Limited, and Bridgestone India Private Limited. Following the DG's note, on August 17, 2020, the CCI expanded the investigation scope to implead MRF along with other tyre manufacturers. MRF contested this inclusion and argued that the change in its status from a third party to an opposite party was done without proper notice. This violated MRF's principles of natural justice and compromised its ability to defend itself.

The Madras High Court emphasized the lack of transparency and due process, critiquing the CCI for not furnishing necessary documents to MRF in a timely manner. It observed that as the DG had initially sought data from MRF as a third party, it was incumbent upon the DG/CCI to have informed MRF and provided it an opportunity of responding prior to the conversion of its status from 'third person' to 'contesting party'. Given that the CCI failed to provide an opportunity to MRF to respond to the notice regarding its impleadment and the justification for such impleadment was not provided through a speaking order, the Madras High Court quashed MRF's inclusion as contesting party.

***View:** This is a pivotal ruling which for the first time sets out the rights of third parties during the DG investigation process and seeks to balance them against the powers of the DG and the CCI to expand the scope of investigation as seen in Cadilla. It will be interesting to see if this decision is challenged before the Supreme Court since the Madras High Court decision may result in opening the dams of challenges by companies in ongoing investigations.*

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18. CCI order imposing a penalty on Geep: Suo Motu Case No. 02 of 2017, In Re: Anticompetitive conduct in the Dry-Cell Batteries Market in India, order dated August 30, 2018, available at: <https://cci.gov.in/images/antitrustorder/en/0220171652435802.pdf> and NCLAT order modifying the said order: Competition Appeal (AT) No. 87/2018, Ms. Pushpa M. vs Competition Commission of India and Ors., order dated March 31, 2023.
 19. WP. No.6493, 6497 & 6502 of 2024, MRF Limited vs Competition Commission of India, order dated April 30, 2024, available at: <https://mhc.tn.gov.in/judis/index.php/casestatus/viewpdf/1132143>.
 20. Online tenders were invited by Haryana Government on September 21, 2018 for purchase of new steel radial tyres of different sizes and specifications.
 21. LPA 160/2018 & CM APPL. No. 11741-44/2018, Cadila Healthcare Limited And Anr vs Competition Commission Of India And Ors, order dated September 12, 2018. In August 2015, CCI had received information that the Chemist & Druggist Association of Baroda along with certain pharmaceutical companies was allegedly limiting and controlling the supply of drugs in Vadodara by requiring "no objection certificates" for the appointment of stockists. The CCI passed an order under Section 26(1) of the Act directing the DG to investigate the role of "certain opposite parties" for the alleged contravention. Pursuant to the order, the DG issued notice to Cadila Healthcare directing it to furnish certain information.

OVERVIEW OF MERGER CONTROL CASES

The CCI approved more than 26 combinations in the Q1 of FY 2024-25 including 3 combinations that were filed by way of the green channel route. A summary of the noteworthy combinations approved during this period including combinations approved in the preceding quarter but detailed orders of which were published during Q1 of FY 2024-25 is set out below:

CCI approves merger of fintech company Garagepreneurs Internet with NESFB²²:

On March 12, 2024, the CCI approved merger of the business operations of Garagepreneurs Internet Private Limited ("**GIPL**")²³ and North-East Small Finance Bank Limited ("**NESFB**")²⁴, proposed to be carried out through a series of inter-connected steps ("**Merger**"). The CCI observed that GIPL had made 2 capital infusions in NESFB prior to the board approval for the Merger and consequently acquired around 10% shareholding in NESFB. Further, GIPL infused additional capital in NESFB, post the board approval for the Merger but prior to the filing of the merger notification before the CCI, pursuant to which GIPL's shareholding in NESFB increased to 20.73% ("**Third Capital Infusion**") and subsequent to filing the merger notification, GIPL infused additional capital in NESFB which further increased GIPL's shareholding in NESFB to 29.17% ("**Fourth Capital Infusion**"). Accordingly, the CCI observed that while various transactions center around the Merger and are being undertaken contemporaneously, the Merger is the only relevant transaction for competition assessment as the merger notification was filed only in relation to the Merger.

The CCI noted that the activities of parties exhibit horizontal overlaps in the broad market of: (i) loans and lending services, which can be further segmented into personal loans, home loans, loans against deposits, MSME loans, etc.; (ii) digital payment services, which can be further segmented into NEFT services, RTGS services, UPI services, etc.; (iii) distribution of insurance products, which can be further segmented into distribution of general insurance products and life insurance products etc.; (iv) distribution of mutual funds; and (v) provision of deposit-taking services. The CCI also noted certain existing/potential vertical links between the parties in terms of the activities of banks offering UPI architecture and third-party application provider services, and between provision of core banking solutions and provision of banking services.

In relation to the horizontal overlaps and vertical linkages between the parties, the CCI observed that the activities of the parties are minimal in qualitative terms, i.e., while the activities may exhibit overlaps in a broader market, the parties may not be the closest competitors of each other at the activity level. Further, the CCI observed that the parties have a negligible presence as reflected in their actual volumes, turnover and/or market share estimates in broad and narrow segments, and accordingly, the Merger is unlikely to have any appreciable adverse effect on competition ("**AAEC**") in India.

Notably, while granting its approval for the Merger, the CCI observed that gun jumping proceedings may be initiated against GIPL in respect of the Third Capital Infusion and the Fourth Capital Infusion. Interestingly, no such observations were made regarding the first 2 capital infusions.

View: It will be interesting to see the CCI's reasoning for initiating proceedings only in respect of the Third Capital Infusion and the Fourth Capital Infusion and not initiating proceedings in respect of the first 2 capital infusions. As such, it is advisable for the parties to seek the CCI approval before consummating capital infusions by way of share acquisition as such acquisitions may be considered as inter-connected to the primary transaction by the CCI, depending on the facts of the case.

CCI approves acquisition of stake in Asian Institute of Nephrology and Urology by TPG Growth V SF Markets and Waverly²⁵:

On March 12, 2024, the CCI approved: (i) the acquisition of fresh redeemable preference shares in Asia Healthcare Holdings PTE. Ltd. ("**AHH**")²⁶ by TPG Growth V SF Markets PTE. Ltd. ("**Growth V**")²⁷ and Waverly PTE. Ltd.

22. Combination Registration No. C-2024/01/1102, *Garagepreneurs Internet / NESFB*, order dated March 12, 2024, available at: <https://www.cci.gov.in/combination/order/details/order/1372/0/orders-section31>.

23. GIPL provides lending services and facilitates loans to borrowers on its digital lending application and offers "slice" pre-paid instrument cards, UPI services as a third-party application provider, and is a master policyholder of its insurance partner's products through its platform.

24. NESFB is a private sector small finance bank.

25. Combination Registration No. C-2024/01/1102, *TPG Growth/ Waverly PTE*, order dated March 12, 2024, available at: <https://www.cci.gov.in/combination/order/details/order/1370/0/orders-section31>.

26. AHH is primarily engaged in long-term investment holding activities and through its direct/indirect subsidiaries, is active in providing healthcare services in the field of maternal, child, and other related healthcare services in India. AHH is jointly controlled by the TPG Group and Waverly.

27. Growth V, an investment fund, is managed and controlled by TPG Inc. (TPG), a diversified global investment firm. TPG controls the TPG Group, which employs various strategies like buyouts, growth & tech investing, and impact investing across sectors such as finance, technology, consumer goods, travel, media, real estate, and healthcare. Additionally, TPG holds a controlling stake in New Quest Capital, a private equity firm with investments spanning across multiple sectors such as finance, travel, and real estate.

("Waverly")²⁸; and (ii) subsequent acquisition of majority shareholding in the Asian Institute of Nephrology and Urology Private Limited ("AINU")²⁹ by AHH. For mapping of overlaps, the parties sought to exclude certain investee companies of GIC (Ventures) PTE. Ltd. which had a miniscule turnover³⁰. However, the CCI observed that it has not specified such criteria and while these factors may be relevant for assessing the potential impact of the proposed combination on competition, they do not negate the need for identifying overlaps. Hence, the CCI rejected such criteria and required the parties to map overlaps between activities of every investee company meeting the materiality thresholds .

Accordingly, the CCI noted that the activities of parties exhibit horizontal overlaps in the broad market for the "provision of healthcare services through hospitals" which can be further segmented into: (i) primary care; (ii) secondary care; (iii) tertiary care; and (iv) quaternary care. The CCI also noted vertical links between the parties in terms of the business of wholesale sale and distribution of pharmaceutical products, medical devices, and over-the-counter products carried out by one of the entities of the acquirer and the business of providing specialized healthcare services carried out by AINU through its 7 hospitals. In relation to the horizontal overlaps and vertical linkages between the parties, the CCI observed that the combined and individual market share of the parties and the incremental market share is insignificant in all the relevant markets (including the broad and narrow segments) which are also characterized by the presence of many players. Accordingly, the CCI concluded that the proposed combination is unlikely to have any AAEC in India.

View: The CCI's observation is in line with the established procedure regarding the identification of overlaps, i.e., for the purposes of disclosures and assessment, the parties must consider every entity meeting the materiality thresholds and cannot exclude any such entities based on any other factors.

CCI approves IndoEdge's acquisition of stake in MG Motor³²:

On April 2, 2024, the CCI approved subscription of equity shares representing 8% of the share capital of MG Motor India Private Limited ("MG Motor")³³ by IndoEdge India Fund – LVF Scheme ("IndoEdgeScheme"), a scheme of IndoEdge India Fund ("IndoEdge")³⁴ in addition to

provision of a right to appoint a director to the board of directors of MG Motor, certain reserved matter rights, certain information rights, etc.

The CCI noted that the activities of parties exhibit horizontal overlaps in the market of: (i) passenger cars ("PVs")/ passenger electric vehicles ("PEVs"); (ii) full fleet leasing and management of vehicles; (iii) engineering research & development ("ER&D") services for PVs; and (iv) electric vehicle ("EV") charging infrastructure. The CCI also noted certain vertical links between the parties in terms of: (a) manufacturing and sale of PVs carried out by MG Motor and provision of full fleet leasing and management services for PVs carried out by one of the entities of the acquirer group; and (b) provision of ER&D services carried out by one of the entities of the acquirer group and manufacture and sale of PVs carried out by MG Motor. Further, the CCI also noted complementary linkages between the parties, based on the activity of manufacture and sale of PEVs carried out by MG Motor and the activity of owning and operating EV charging stations carried out by entities of acquirer group.

28. Waverly, which is wholly owned by GIC (Ventures) Pte Ltd., operates as a special purpose vehicle within a group of investment holding companies managed by GIC Special Investments Private Limited ("GICSI"). GICSI, established as the private equity and infrastructure arm of GIC Private Limited, manages investments in private equity, venture capital, and infrastructure, and is fully owned by GIC Private Limited.

29. AINU, a single-specialty center based in South India, is focused on providing healthcare services through hospitals, specializing in: (i) urology; (ii) nephrology; and (iii) dialysis and kidney transplant. It also provides radiology and pathology services to their patients and has 7 hospitals which provide primary, secondary, and tertiary healthcare.

30. The parties sought to exclude companies that: (i) derive revenue of less than INR 2 crores from India; (ii) are not engaged in healthcare services or operating healthcare facilities (including hospitals); (iii) derive incidental revenue from services pertaining to Urology, Nephrology, Andrology, Anesthesiology, Pathology, and Radiology (i.e., less than 5% of the total revenue of the company); or (iv) are purely debt investments.

31. Based on the Notes to Form I published on March 27, 2020, for the purposes of the disclosure and assessment in relation to equity investments and overlaps, parties have to consider only such entities, having a business presence in India (whether through incorporation or sales), in which it has: (i) direct or indirect shareholding of 10% or more; (ii) have a right or ability to exercise any right (including any advantage of commercial nature with any of the party or its affiliates) that is not available to an ordinary shareholder; or (iii) a right or ability to nominate a director or observer.

32. Combination Registration No. C-2024/01/1102, IndoEdge India/ MG Motor, order dated April 02, 2024, available at: <https://www.cci.gov.in/combination/order/details/order/1384/0/orders-section31>.

33. MG Motor is engaged in the automobile original equipment manufacturing business which primarily includes the manufacture and sale of passenger cars (including passenger electric vehicles) under the brand 'MG' ("MG Cars") and provision of after-sale services for MG Cars. Additionally, MG Motor is engaged in sale of automobile parts and accessories for MG Cars through MG authorized dealers and the "My MG" app.

34. IndoEdge Scheme is a large value fund for accredited investors. IndoEdge is a contributory determinate trust registered as a Category II Alternative Investment Fund.

Additionally, the CCI observed that Everstone Capital Advisors Private Limited ("**ECAPL**")³⁵ provides non-binding sub-advisory services to the investment manager(s) of the Everstone Group. In relation to the same, IndoEdge clarified that there are no shareholding linkages between ECAPL and Everstone Group. Nevertheless, IndoEdge Scheme also conducted the overlap assessment between the Everstone Group, including its affiliates, and MG Motor, and confirmed that there are no new areas of overlaps/linking.

In relation to the horizontal overlaps and vertical linkages between the parties, the CCI observed that the presence of the parties in their respective activity segments is insignificant on a standalone and consolidated basis. Hence the parties do not have any ability/incentive for potentially engaging in any foreclosure strategies and accordingly the proposed combination is unlikely to have any AAEC in India.

View: By way of the foregoing order, it appears that in cases where an investment management firm provides its services to entities other than the notifying parties, the notifying parties, in relation to identification of overlaps, will also have to consider the activities of such other entities (including their affiliates).

CCI approves Piramal Alternatives Trust's investment in Annapurna Finance³⁶:

On April 2, 2024, the CCI approved the acquisition of 10.39% of the equity share capital of Annapurna Finance Private Limited ("**Annapurna Finance**")³⁷ by Piramal Alternatives Trust ("**Piramal Alternatives**")³⁸ ("**Share Acquisition**") from certain existing shareholders of Annapurna Finance. Further, it is also envisaged that Piramal Alternatives shall: (i) subscribe to certain debentures of Annapurna Finance ("**Debenture Subscription**"); (ii) be entitled to nominate 1 director on the board of Annapurna Finance subject to the prescribed minimum shareholding requirement; and (iii) be entitled to nominate 1 individual to be its observer on the board of Annapurna Finance and its certain committees. However, the CCI did not consider the Debenture Subscription as an acquisition of "share" given that the holder of the debentures in the instant matter can convert them in equity shares, i.e., shares

with voting rights, of Annapurna Finance only subject to "mutual consent" of Annapurna Finance. As such, the CCI observed that the Debenture Subscription could not be considered "shares" in terms of provisions of the Act³⁹ and accordingly the requirement of notice in relation to the acquisition of shares pursuant to conversion of the debentures shall be determined as per extant law before such conversion.

The CCI noted that the activities of parties exhibit horizontal overlaps in the broad market for "*the provision of loans in India*" which can be segmented into retail loans which can be further sub-segmented into: (i) housing and home improvement loans; (ii) MSME loans; (iii) consumer durables loans; (iv) microfinance loans; and (v) personal loans. The CCI also noted vertical links between the parties in terms of the business of provision of credit facilities for microfinancing in India carried out by one of the entities of the acquirer group and the business of the provision of loan and lending services carried out by Annapurna Finance. However, in relation to the horizontal overlaps and vertical linkages between the parties, the CCI observed that the presence of the parties is unlikely to have any AAEC in India.

View: By way of the foregoing order, it appears that the CCI is unlikely to undertake pre-mature assessment of transactions, although interconnected, that are yet not determinative and hence the parties shall approach the CCI only when there is more certainty.

35. IndoEdge Scheme and IndoEdge are professionally managed by ECAPL which is an independent investment manager and manages the investments made by the IndoEdge Scheme.

36. Combination Registration No. C-2024/01/1102, *Piramal Alternatives/Annapurna Finance*, order dated April 02, 2024, available at: <https://www.cci.gov.in/combination/order/details/order/1376/0/orders-section31>.

37. Annapurna Finance is a non-deposit taking non-banking financial company engaged in the business of microfinance that offers a variety of financial and non-financial products and services including loan-related products such as: (i) home/housing loans; (ii) MSME loans; (iii) consumer durable loans; (iv) personal loans; (v) loans to street vendors; (vi) group loans; (vii) mid-term loans; (viii) loans to marginalized segment; (ix) loans for installation of safe water and sanitation infrastructure; (x) dairy development loans; and (xi) loans for installation of solar panels.

38. Piramal Alternatives is engaged in the business of fund management. It provides customised financing solutions to high-quality corporates through 'Piramal Credit Fund' - a performing, sector-agnostic credit fund; and 'IndiaRF' - a distressed asset investing platform which invests in equity and/or debt across non-real estate sectors.

39. Section 2(v)(i) of the Act stipulates any security which entitles the holders to receive shares with voting rights is considered as "shares".

REGULATORY DEVELOPMENTS

The first quarter of 2024 saw some major regulatory developments in competition law in India as set out below:

CCI updates its confidentiality regime:

On May 10, 2024, the CCI notified the CCI (General) Amendment Regulations, 2024 ("**Amended Regulations**").⁴⁰ These regulations amend the provisions of the CCI (General) Regulations, 2009⁴¹ ("**General Regulations**") in relation to the treatment of confidential information during CCI proceedings. The Amended Regulations: (i) have mandated the parties to self-certify their confidentiality claims through affidavits (instead of the simple undertaking required previously); (ii) allows the parties to make a request to the CCI for setting up a confidentiality ring; and (iii) allows parties included within the confidentiality ring to make an application for inspection of documents; and (iv) has increased the inspection charges. The notification of the Amended Regulations is a welcome development as it will further bolster the already successful confidentiality regime of the CCI by streamlining the procedure related to submission of confidential information and creation of confidentiality rings which will enable effective and timely disposal of matters.

CCI proposes further amendments to General Regulations:

On June 6, 2024, the CCI published the draft amendments to the CCI (General) Regulations, 2009 ("**Draft Amendment**"), inviting public comments till July 8, 2024.⁴³ The Draft Amendment, *inter alia*, proposes to: (i) intimate the parties regarding the *prima facie* orders passed by the CCI in anti-trust cases (except in cartel cases); (ii) extend procedural timelines in certain cases, for instance, the time period for: (a) submission of the investigation report ("**DG Report**") is proposed to be increased from 60 days to 90 days; (b) presentation of the DG Report (or the supplementary DG Report) before the CCI by the Secretary of the CCI is proposed to be increased from 7 days to 4 weeks, etc.; (iii) offer an opportunity of cross-examination to the party against whom statements given under oath by deponents/witnesses has been relied upon by the DG in the DG Report; (iv) introduce 'miscellaneous applications' as a distinct category of application comprising all applications other than 'interlocutory applications'; (v) increase the fee for filing the information before the CCI; (vi) discontinue the issuance of separate show-cause notice to individuals as the issuance of DG report to such individuals will be deemed as issuing of show-cause notice, etc.

40. Available at: <https://www.cci.gov.in/images/stakeholderstopticsconsultations/en/gazette-notification-published-on-10-may-2024-regarding-the-competition-commission-of-india-gene1715398121.pdf>.

41. Available at: <https://www.cci.gov.in/images/stakeholderstopticsconsultations/en/draft-amendment-to-regulations-35-37-and-50-of-the-competition-commission-of-india-general-reg1708757709.pdf>.

42. Our detailed analysis of the Amended Regulation is available at: <https://induslaw.com/publications/pdf/alerts-2024/competition-commission-of-india-updates-its-confidentiality-regime.pdf>.

43. Available at: <draft-amendments-to-the-cci-general-regulations-20091717612278.pdf>.



COMPETITION ADVOCACY

CCI launches market study on artificial intelligence and competition⁴⁴:

In pursuance of its advocacy mandate under the Act, the CCI, on April 22, 2024, floated an open tender for engagement of an agency to conduct market study on "artificial intelligence and competition" ("Study"). The objective of the study is to: (i) understand key artificial intelligence ("AI") systems and markets/ecosystems; (ii) examine the emerging and potential competition issues in these markets/ecosystems; (iii) study the scope and nature of AI applications/use cases and assess associated opportunities, risks and ramifications from a competition standpoint; (iv) understand the existing

and evolving regulatory/legal frameworks governing AI systems and applications in India; (v) reach out to all relevant stakeholders for a holistic understanding of the issues at the intersection of AI and competition; and (vi) understand trends and patterns of AI and to ascertain enforcement and advocacy priorities of the CCI with respect to AI and its application in markets. As such, the study will help the CCI shape its strategies aimed at fostering innovation and fair competition.

35. Available at: https://www.cci.gov.in/economics-research/market-studies/details/45/0_



INSTITUTIONAL UPDATES

CCI celebrates its 15th Annual Day⁴⁵:

On May 20, 2024, the CCI celebrated its 15th Annual Day commemoration. The Attorney General for India (“AG”), Shri R. Venkataramani, delivered the special address as Chief Guest. The AG in his address, *inter alia* spoke about how the need for regulation of competition has travelled domains of prevention of unfairness in competition, to price determination and consumer welfare, and entering the age of common good as the determining factor.

45. Available at: pib.gov.in/PressReleaseframePage.aspx?PRID=2021147.

46. Available at: <https://www.thehindubusinessline.com/news/inder-pal-singh-bindra-appointed-as-cci-secretary/article68266028.ece>.

CCI has a new Secretary in Mr. Inder Pal Singh Bindra⁴⁶:

On June 8, 2024, Mr. Inder Pal Singh Bindra was appointed as the new Secretary of the CCI for 3 years by the Central Government. Mr. Bindra, who was posted as an officer in the Income Tax department prior to his appointment as the CCI Secretary, will replace Ms. Anupama Anand, who resigned within 8 months of being appointed in September 2023.



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