



**THE SENTINEL
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INTRODUCTION

INDUSLAW presents the final edition of its quarterly competition law newsletter, '**The Sentinel**', for financial year ("FY") 2024-25. As the name suggests, by way of this short yet extensive compilation of updates, we keep a watch for significant decisions passed by the Competition Commission of India ("**CCI**"), the National Company Law Appellate Tribunal ("**NCLAT**"), various High Courts, Hon'ble Supreme Court of India ("**SC**") as well as regulatory and institutional updates which will help you navigate the Indian competition law space with ease.

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

"We are pleased to share the key highlights from the dynamic world of competition law in the fourth quarter of FY 2024-2025, through our quarterly competition

law newsletter, 'The Sentinel'. This quarter witnessed major developments such as the Hon'ble SC allowing Independent Sugar Corporation Ltd.'s ("**INSCO**") appeal and directing that prior approval of the CCI is mandatory before Committee of Creditor's ("**CoC**") vote of a resolution plan in insolvency cases, the National Company Law Appellate Tribunal partially upholding the CCI's findings of abuse of dominance by Google but reducing the penalty, the CCI: (i) combining information against Google entities (collectively, "**Google**") with ongoing investigation into its advertising technology services; (ii) dismissing information against Zomato Ltd. ("**Zomato**") for unfair and discriminatory conduct; (iii) penalizing Goldman Sachs (India) Alternative Investment Management Private Limited ("**GS AIMPL**"), and Goldman Sachs AIF Scheme-1 ("**GS AIF**") (collectively "**GS**") for gun jumping, etc., as well as regulatory and institutional updates.



SUMMARY OF KEY DEVELOPMENTS IN Q4 OF FY 2024-2025

JAN – MAR 2025

December 10

The CCI clears on-market acquisition of Covestro AG by Abu Dhabi's ADNOC.

January 8

The CCI combines another information against Google with ongoing investigation on its advertising technology services.

January 14

The CCI dismisses information filed against Honda for inter alia foreclosing competition.

January 14

The CCI penalizes Goldman Sachs for gun jumping- a reminder to the investors to tread carefully.

February 17

The CCI releases draft cost regulations – updating the regulations to sync with modern market economics.

January 29

The SC allows INSCO's appeal and directs that prior CCI approval is mandatory before CoC's voting of a resolution plan in CIRPs involving a combination.

January 21

The CCI approves Agro Tech's acquisition of stake in Del Monte Foods.

January 14

The CCI finds Torrent Power guilty of gun-jumping but holds back on the penalty stick.

February 17

The CCI releases draft conduct rules for its staff: aims to strengthen ethical oversight.

March 3

The CCI dismisses information filed against Microsoft for bundling antivirus software with its Windows Operating System.

March 3

The CCI dismisses information against Aegis Logistics Limited and others for collusion in tender invited by New Mangalore Port Trust.

March 6

The CCI dismisses information against Zomato Ltd. for unfair and discriminatory conduct.

March 25

The CCI directs an investigation into TASMAC's beer procurement practices.

OVERVIEW OF ENFORCEMENT CASES

Decisions by the SC

SC allows INSCO appeal and directs that prior CCI approval is mandatory before CoC's vote of a resolution plan in Insolvency and Bankruptcy Code, 2016 ("IBC") cases¹

On January 29, 2025, the SC delivered a majority verdict in an appeal filed by INSCO and held that: (i) any resolution plan involving a combination must secure CCI's approval prior to the CoC vote on the resolution plan; (ii) in IBC cases the trigger event for filing a notice with the CCI can be prior to the submission of the resolution plan to the CoC; (iii) there is no disharmony between the timelines prescribed under the IBC and the Competition Act, 2002 ("Act"); and (v) the CCI shall issue Show Cause Notice ("SCN") to both the acquirer and target if it forms a prima facie opinion that a combination is likely to cause or has caused an appreciable adverse effect on competition ("AAEC").

IndusLaw's Competition team successfully represented and advised INSCO before the Hon'ble SC. Further, IndusLaw's Disputes team is also actively advising INSCO on the corporate insolvency resolution process. A detailed analysis of the instant order can be accessed [here](#).

Decisions by the NCLAT

NCLAT partly upholds CCI's findings of abuse of dominance by Alphabet Inc. and Google, modifies directions and reduces penalty²

On March 28, 2025, the NCLAT upheld the CCI's decision that Google had abused its dominant position by mandating use of Google Play's Billing System ("GPBS") and leveraging its dominance in the app store market to protect its position in market for UPI enabled digital payments app. However, the NCLAT set-aside the CCI's observation that Google: (i) had negative effect on innovations by other payment processors; and (ii) denied market access to other payment processors. Resultantly, the NCLAT reduced the penalty imposed by CCI from INR 936.44 crores (approx. 109.20 USD million³) to INR 216.69 crores (approx. 25.27 USD million).

By way of background, the CCI had found that Google's conduct, relating to its Play Store policies, billing systems, and payment's app i.e. Google Pay, resulted in imposition of unfair and discriminatory conditions, limiting of innovation, denial of market access and

leveraging of dominance to protect its position in downstream markets.⁴

On appeal, the NCLAT upheld the CCI's finding that:

- (i) Mandating the exclusive use of GPBS by app developers was unfair and anti-competitive;
- (ii) Google's discriminatory treatment of other UPI-based payment apps *vis-à-vis* Google Pay violated the provisions of the Act; and
- (iii) The 'market for apps facilitating payment through UPI in India' is a distinct relevant market, and UPI was not substitutable with other digital payment modes i.e., wallets, credit and debit cards and net banking.

However, the NCLAT differed from the CCI and set aside the following CCI findings, namely:

- (i) Google engaged in discriminatory pricing by exempting its own apps like YouTube from paying a 15-30% fee, that was being paid by app developers;
- (ii) Google restricted or limited technical or scientific development relating to the market of payment processors/aggregators; and
- (iii) Google abused its dominant position in the app store market to cause denial of payment processing.

Further, it clarified that while the effect based analysis must examine both actual and potential anti competitive harm from conduct, the analysis cannot be performed on mere likelihood of occurrence of the conduct by a dominant enterprise that may cause harm.

1. Civil Appeal No. 6071 OF 2023, *Independent Sugar Corporation Ltd. v. Girish Sriram Juneja*, order dated January 29, 2025, available at: https://api.sci.gov.in/supremecourt/2023/38828/38828_2023_4_1503_59041_Judge-ment_29-Jan-2025.pdf.

2. Competition Appeal (AT) No. 04 of 2023, *Alphabet Inc. & Ors. v. Competition Commission of India & Anr.*, order dated March 28, 2025, available at: https://efiling.nclat.gov.in/nclat/order_view.php?path=L05DTEFUX-0RvY3vtZW50cy9DSVNfrG9jdW1lbnRzL2Nhcy2Vkb2Mvb3JkZXJzL0RFTEh-JLzlwMjUtMDMtMjg5Y291cnRzLzEvZGFpbHkvMTc0NDgwNzE1OTk1Mzk-0Mj1NzY3ZmZhNGY3MmQ1YzEucGRm.

3. Converted at 1 USD=INR 85.75

4. The appeal arises from the CCI order observing Google to be dominant in two relevant markets: (i) licensable OS for smart mobile devices in India; and (ii) app stores for Android mobile OS in India and held that its conduct constituted abuse of dominance, imposing a penalty of INR 936.44 crore (approximately 109.26 USD million).

In relation to CCI's remedies, it held that few of such directions (regarding anti-steering provisions, data transparency, and usage of user data) amounted to *ex ante* regulation, which is beyond the CCI's remit. Hence, NCLAT set aside such remedies.

Lastly, the NCLAT reduced the penalty on Google and affirmed the SC ratio, in *Excel Crop Care Ltd. v. CCI*⁵, that the penalty must be based on "relevant turnover" attributable to the infringing business.

View: The NCLAT order has clarified that in order to establish abuse of dominance, the "effect-based analysis" must be done on conduct already undertaken and consequent harm caused/likely to be caused. However, the mere likelihood of conduct is not sufficient to find contravention. The NCLAT also rightly appears to have ensured that the CCI does not overstep and issue directions which are outside its remit. Finally, there is clarity that penalties are to be computed on the "relevant turnover" attributable only to the infringing business(es).

Decisions by the CCI:

In the final quarter ("Q4") of the FY 2024-25, the CCI issued a total of 15 (fifteen) orders in relation to enforcement matters. Of these the CCI:

- (i) Directed the Director General, CCI ("DG") to investigate 3 (three) information;
- (ii) Declined to investigate 11 (eleven) information relating to allegations of abuse of dominance and anti-competitive agreements; and
- (iii) Disagreed with the DG's findings of contravention and closed an information.

A summary of the noteworthy cases is set out below:

CCI combines another information against Google with ongoing investigation into its advertising technology services⁶

On January 8, 2025, the CCI directed the DG to combine information, filed by a co-founder of an app⁷, against Google⁸. The allegations pertain to anti-competitive tying arrangements and abuse of dominance primarily relating to various ad-tech intermediation services provided by Google namely: (i) tying of DoubleClick for Publishers with Google's Ad Exchange ("AdX") into Google Ad Manager; (ii) Google consistently favoured its

own properties over those of Google Network Members; (iii) Google's open bidding policy imposed unfair and discriminatory conditions on the publishers and third-party exchanges ("3PX") as Google plays a dual role of hosting the auction and participating as a bidder through AdX; (iv) Google's Unified Pricing Rule functioned as a *de facto* price parity clause and harmed publishers by removing their flexibility to create competitive pricing structures, while also preventing 3PX from competing effectively on price; (v) Google Ads did not disclose the fees for its services; (vi) Google imposed exorbitant fees⁹, on publishers through Google Ad Manager; and (vii) Google has leveraged its dominant position in the primary 'market of general web search to enter and protect its market position in the AdTech market'.

The informant delineated the relevant markets into the markets for: (i) 'Publisher Ad Servers for Websites and Mobile Applications in India'; (ii) 'Ad Buying tools for Advertisers in India'; (iii) 'Ad Exchanges in India'; and (iv) 'General Web Search Services'. In relation to Google's dominance, the CCI noted that it had previously found Google to occupy a significant position in the market for 'online digital advertising intermediation services' in a matter that is currently under investigation ("Ongoing Investigation")¹⁰.

In light of the above, the CCI concluded that the subject matter of the allegations made in the present information was substantially similar to the Ongoing Investigation. Accordingly, the CCI directed the DG to investigate various practices in the ad-tech intermediation services and submit a consolidated investigation report.

5. Civil appeal No. 2480 of 2014, *Excel crop care limited vs. Competition Commission of India and Others.*, order dated May 8, 2017, available at: <https://indiacorplaw.in/wp-content/uploads/2017/05/excel-crop-v-cci.pdf>.

6. Case No. 34 of 2024, *Mr. Maulik Surani and Alphabet Inc., Google LLC, Google International LLC, Google India Private Limited*, order dated January 8, 2025, available at: <https://www.cci.gov.in/antitrust/orders/details/1168/0>

7. The information was filed by Mr. Maulik Surani, the co-founder of M/s Capset Infotech, a Surat-based entity which specializes in web, mobile application, and software development, with several mobile applications listed on the Google Play Store.

8. The allegation primarily relates to various ad-tech intermediation services provided by Google and the DG is already investigating certain aspects of such ad-tech intermediation services provided by Google by way of earlier CCI orders. Please see: Case No. 41 of 2021, *Digital News Publishers Association and Alphabet Inc. & Others*, order dated January 7, 2022, available at: <https://www.cci.gov.in/antitrust/orders/details/11/0>; Case No. 10 of 2022, *The Indian Newspaper Society and Alphabet & Others*, order dated February 22, 2022, available at: <https://www.cci.gov.in/antitrust/orders/details/11/0>; and Case No. 36 of 2022, *News Broadcasters & Digital Association and Alphabet & Others*, order dated October 2, 2022, available at: <https://www.cci.gov.in/antitrust/orders/details/11/0>.

9. It increased from the previous 9% to approximately 30%.

10. *Ibid.*

View: The investigation order reaffirms CCI's consistent stance on denial of market access by a dominant player through selective exclusion and restrictive policies constituting a prima facie abuse of dominance. The forthcoming CCI's Investigation report may likely play a crucial role in determining the fate of AdTech market in India.

CCI dismisses information filed against Microsoft Corporation and Microsoft Corporation (India) Private Limited (collectively, "Microsoft") for bundling antivirus software with its Windows Operating System¹¹

On March 3, 2025, the CCI dismissed an information¹² filed against Microsoft, for alleged abuse of dominance.

It was alleged that Microsoft (beginning from its Windows 10 edition of the Operating System ("OS"): (i) excluded more efficient competing antivirus software vendors in India by preinstalling and setting 'Microsoft Defender' as the pre-activated default antivirus app in Windows OS; (ii) restricted market access of rival security software developers by tying and bundling its own security software, 'Microsoft Defender', with Windows OS; (iii) illegally hindered the development and denied market access of rival security software developers by making membership of Microsoft Virus Initiative ("MVI") compulsory, in order to get listed in the Microsoft Store and work smoothly in Windows OS; and (iv) leveraged its dominance in the 'market for desktop operating system to protect its position in the market for security software/antivirus software developers in India'.

Based on its decisional practice,¹³ the CCI has delineated the relevant market into the markets for: (i) 'licensable OSs for desktops/laptops in India'; and (ii) 'desktop/laptop security (antivirus) software for Windows OS in India'.

The CCI observed that:

(i) There is no compulsion on users to exclusively use 'Microsoft Defender' as their antivirus solution and they are free to install any third-party antivirus software of their choice. Even Original Equipment Manufacturer ("OEMs") are permitted to pre-install alternative third-party antivirus software on desktops and laptops running Windows OS;

(ii) There are many developers of antivirus software that routinely introduce new features and enhance their offerings to provide better services to customers, suggesting that Microsoft's inclusion of 'Microsoft Defender' has not stifled technological advancement or deterred competition;

(iii) The alleged tying of 'Microsoft Defender' with Windows OS was not in violation of the Act as the third and fourth conditions laid down in *Harshita Chawla v. WhatsApp and Anr.*¹⁴ ("**Harshita Chawla Case**") were not fulfilled¹⁵;

(iv) Since there is no evidence of an active restriction or conditionality imposed regarding the use of Microsoft Defender and the market remains highly competitive, it cannot be said that Microsoft has leveraged its dominance in the operating system market to protect its position in the computer security software market; and

(v) Non-MVI antivirus developers were not restricted from distributing their applications on Windows owing to an alternative through the Microsoft Store and direct downloads from their websites.

Thus, the CCI held that there seemed to be no *prima facie* contravention of the Act and dismissed the information.

11. Case No. 3 of 2024, *XYZ and Microsoft Corporation, Microsoft Corporation (India) Private Limited*, order dated March 3, 2025, available at: <https://www.cci.gov.in/antitrust/orders/details/1172/0>.

12. The CCI granted confidentiality on the details of the informant CCI.

13. The CCI has consistently held that owing to technological differences and differences in intended usage and characteristics, there is no substitutability between smart mobile OS and desktop OS, and they form part of separate relevant markets. Please see: Case No. 7 of 2020, *XYZ and Alphabet Inc., Google LLC, Google Ireland Limited, Google India Private Limited, Google India Digital Services Private Limited*, order dated November 9, 2020, available at: <https://www.cci.gov.in/antitrust/orders/details/71/0>.

14. Case No. 15 of 2020, *Harshita Chawla v. WhatsApp and Anr.*, order dated August 18, 2020, available at: <https://www.cci.gov.in/antitrust/orders/details/118/0>. The CCI in this case laid down certain conditions which need to be fulfilled to conclude a case of tying. Such conditions are: (i) the tying and tied products are two separate products; (ii) the entity concerned is dominant in the market for the tying product; (iii) the customers or consumer does not have a choice to obtain the tying product only without the tied product; and (iv) the tying is capable of restricting/foreclosing competition in the market.

15. The conditions (iii) and (iv) laid down in the *Harshita Chawla Case* are not met as neither the end users nor the OEMs are obliged to retain Microsoft Defender as their sole antivirus solution and users may at any time install, run in parallel, or register third party products which makes them free to preinstall alternative security software on Windows devices. Additionally, the OEMs are permitted to install alternative third-party anti-virus software on the desktops and laptops running windows OS. Thus, it does not foreclose or restrict market access.

CCI dismisses information filed against Aegis Logistics Limited, Indus Petro Chem Limited, and Sea Lord Containers Limited (“OPs”) and others for collusion in tender invited by New Mangalore Port Trust¹⁶

On March 3, 2025, the CCI dismissed an information filed against the OPs for allegedly colluding in relation to a tender invited by New Mangalore Port Trust (“NMPT”) for the installation of storage facilities.

It was alleged that the OPs belonged to the same group with common directors and essentially controlled by the same set of people. The OPs then collusively participated in the tender and acted identically in the tender process. Further, the OPs competed individually (instead of participating as a consortium). A similar collusive tactic and bid-rigging was followed in the renotified tender as well.

Based on the data provided in the information, submissions of NMPT and publicly available information, the CCI observed that the allegation of having acted identically in respect of impugned tender was not supported by any evidence. Further, the CCI noted that merely being related to each other, without any evidence of likely collusion, cannot be a ground for investigation under the Act.¹⁷

Thus, the CCI held that there seemed to be no *prima facie* contravention of the Act and dismissed the information.

CCI dismisses information filed against Honda Motorcycle & Scooter India Private Limited (“HMSI”) for *inter alia* foreclosing competition¹⁸

On January 14, 2025, the CCI dismissed an information filed against HMSI for abusing its dominant position.¹⁹

It was alleged that HMSI: (i) coerced the informant into terminating his existing Suzuki Motorcycle India Private Limited (“Suzuki”) dealership before considering his application for a new dealership with HMSI, with an intention to foreclose Suzuki’s competitors; (ii) upon the informant’s appointment as a dealer of Suzuki, dumped unpopular models on his dealership without prior orders; and (iii) unilaterally terminated the dealership agreement in January 2024, citing performance concerns.

Based on the information submitted, the CCI noted that the cause of action had arisen in 2018 itself²⁰ and the rationale that contract subsisted until its termination in January 2024, does not seem to be plausible for condonation of delay in filing of the information.

Notwithstanding the delay, the CCI observed that the allegations regarding dumping of unpopular models on the informant’s dealership, and unilateral termination, appeared to be commercial disputes involving commercial terms and business arrangements between the parties, which do not typically fall under the scope of anti-competitive conduct under the Act.

Thus, the CCI held that there seemed to be no *prima facie* contravention of the Act and dismissed the information.

CCI directs an investigation into Tamil Nadu State Marketing Corporation Limited’s (“TASMAC”) beer procurement practices²¹

On March 25, 2025, the CCI directed the DG to conduct an investigation in relation to an information²² against TASMAC. It was alleged that TASMAC, a state-owned monopoly for liquor retail in Tamil Nadu, abused its dominant position by favouring select beer brands²³ while restricting market access for other brands.

It was alleged that TASMAC had formed a nexus with a few breweries such as SNJ Breweries and was purchasing beer brands only from these breweries for onward sale to consumers. This resulted in: (i) restriction on sales of other brands, owing to liquor products being exclusively sold to public consumers through TASMAC; and (ii) limiting variety and choice available to consumers, despite 46 other beer brands being available on the market.

16. Case No. 7 of 2024, XYZ And Aegis Logistics Limited, Indus Petro Chem Limited & Sea Lord Containers Limited, order dated March 3, 2025, available at: <https://www.cci.gov.in/antitrust/orders/details/1173/0>.

17. Case No. 10 of 2020, In Re: Ved Prakash Tripathi v. Director General Armed Forces Medical Services & Ors., order dated May 6, 2020, available at <https://www.cci.gov.in/antitrust/orders/details/139/0>; and Case No. 41 of 2018, Reprographics India v. Hitachi Systems Micro Clinic Pvt. Ltd. & Anr, order dated November 9, 2018, available at: <https://www.cci.gov.in/antitrust/orders/details/216/0>.

18. Case No. 16 of 2024, Mr. Rajesh George and Honda Motorcycle & Scooter India Pvt. Ltd., order dated January 14, 2025, available at: <https://www.cci.gov.in/antitrust/orders/details/1166/0>.

19. The information was filed by Mr. Rajesh George who is the Managing Director of Classic Omega Auto Private Limited having its registered office at Thrissur, Kerala, and a dealer of HMSI.

20. The CCI noted that the informant was coerced to abandon Suzuki dealership in 2018 as a pre-condition for being eligible for HMSI dealership. This gave rise to the cause of action in 2018 itself. The CCI refused to condone the delay as the informant’s averments showed that he was aware of the issues long before lodging his complaint, i.e., since 2018. He continued to prefer the dominant entity’s product until January 2024. This factor regarding timeline of filing an information assumes importance in light of the recent amendment made to the Act which mandates a 3-year time limit for filing information or reference for anti-trust concerns.

21. Case No. 02 of 2024, Chakra R Prabhakaran v. Tamil Nadu State Marketing Corporation Limited., order dated March 25, 2025, available at: <https://www.cci.gov.in/antitrust/orders/details/1179/0>.

22. The information was filed by an individual, Mr. Chakra R Prabhakaran.

23. i.e., ‘SNJ 10000’ and ‘British Empire’.

The CCI delineated the relevant market as the market for 'procurement, marketing, distribution and sale of beer in Tamil Nadu' ("**Market for Beer**"). Accordingly, it observed that TASMAC has statutory monopoly in relation to: (i) the wholesale and retail supply of Indian Made Foreign Liquor; and (ii) the distribution and sale of liquor for the entire state of Tamil Nadu. Hence, TASMAC was held to be dominant in the Market for Beer.

Based on the procurement data for the last three financial years furnished by TASMAC, the CCI noted that the market share of brands of two manufacturers, i.e., Kals Breweries Pvt. Ltd. and SNJ Breweries Pvt. Ltd.²⁴, is significantly higher compared to other brands²⁵.

In light of the above, the CCI *prima facie* noted that TASMAC appears to be abusing its dominant position in the Market for Beer by limiting market access to certain brands of beer and directed the DG to conduct an investigation.

CCI dismisses information against Zomato. for unfair and discriminatory conduct²⁶

On March 6, 2025, the CCI dismissed an information²⁷ against Zomato in relation to unfair and discriminatory conduct.

The informant alleged that Zomato abused its dominance in the market for app based food delivery services in India. It has been alleged that Zomato: (i) charged consumers prices 20–30% above restaurant menu rates without

displaying menu prices on packaging; (ii) levied platform, delivery, packing charges, donations and tips by default without a visible opt out; (iii) operated as a duopoly with no real competition leading to levy of undue, excessive and monopolistic charges on the consumers; (iv) earned treasury profits by delaying payments to restaurants; and (v) failed to assume responsibility for the quality, freshness or safety of delivered food.

The CCI observed that no specific violation of the provision of the Act had been pleaded. However, given the focus on allegedly unfair or discriminatory charges, the CCI examined the information to assess any abuse of dominant position by Zomato. It was held that the informant had provided no data or evidence to support a duopolistic market structure or to demonstrate that the fees charged were unfair or discriminatory. The CCI further noted that tips to delivery agents were optional with an easily visible opt out. Additionally, the allegations regarding food edibility, packaging disclosures and payment timing did not raise competition concerns.

Accordingly, the CCI held that there is no *prima facie* case of abuse of dominance and delineation of a relevant market is unnecessary and closed the information.

24. i.e., 'SNJ 10000' and 'British Empire', respectively.

25. The CCI further observed that among other brands mentioned in TASMAC's price list, only Kingfisher and Zingaro had a significant share in procurement.

26. Case No. 27 of 2024, *Lalit Wadher v. Zomato Ltd.*, order dated March 6, 2025, available at: <https://www.cci.gov.in/antitrust/orders/details/1180/0>.

27. The information was filed by a senior citizen, Mr. Lalit Wadher.



OVERVIEW OF MERGER CONTROL CASES

The CCI approved approximately 35 (thirty-five) combinations in the Q4 of FY 2024-25 including 6 (six) deemed approvals for combinations that were filed under the green channel route ("**GCR**"). Further, the CCI also issued two orders relating to gun-jumping. Summary of the noteworthy combinations approved during this period (including combinations approved in the preceding quarter but the detailed orders of which were published during Q4 of FY 2024-25) are set out below:

Gun-jumping orders

CCI penalizes on GS, for gun jumping - a reminder to minority investors with limited rights to tread carefully²⁸

On January 14, 2025, the CCI imposed a penalty of INR 40,00,000 (approx. USD 46,500) on GS for gun jumping in relation to the subscription of the optionally convertible debentures ("**OCD**") (amounting to 3.81% shareholding upon conversion) of Biocon Biologics Limited ("**Biocon**") by GS AIF (acting through its investment manager GS AIMPL). Pursuant to the subscription, GS AIF was also granted access to key category of rights in Biocon, namely: (i) '**Reserved Matters Rights**'²⁹; (ii) '**Information Rights**'³⁰ including the '**Minutes Rights**'; and (iii) '**Access Rights**'³¹.

Given that the transaction was consummated prior to the CCI approval, the CCI issued a SCN to GS. GS, *inter alia*, primarily argued that the transaction satisfies every condition of the '**Item 1 Exemption**'³² including the rights condition³³. However, rejecting GS's arguments the CCI held that the transaction does not qualify for Item 1 Exemption since the transaction does not meet either the requirements of solely as an investment condition ("**SOI Condition**") or ordinary course of business condition ("**OCB Condition**").

In relation to the SOI condition, the CCI, *inter alia*, observed that GS's interpretation of the rights condition is untenable given that the Minutes Right and Access Right extends beyond the ordinary shareholders' rights both in terms of form and substance³⁴ and grants GS with potential access to confidential and strategic information of Biocon³⁵. These rights along with Reserved Matter Rights, according to the CCI, were also indicative of the transaction being strategic in nature. In relation to the OCB condition, the CCI observed that the transaction involved longer-term investments³⁶ and additional

rights, i.e., Reserved Matter Rights and Information Rights.³⁷ Accordingly, GS's subscription of OCDs in Biocon could not be considered as an OCB transaction and it failed the "*frequent, routine, and usual*" test³⁸ for OCB transactions. Accordingly, the CCI concluded that the transaction was notifiable and by consummating the same without filing a merger notification, GS committed gun jumping.

View: This order reaffirms CCI's long-standing focus on evaluating the substance of investor rights, rather than the declared boilerplate intent (i.e. protection

28. Combination Registration No. M&A/10/2020/01/CD, *Goldman Sachs (India) Alternative Investment Management Private Limited*, order dated January 14, 2025, available at: https://www.cci.gov.in/combination/order/details/order/1518/0/orders-section43a_44.
29. Some of such rights were to be exercised with the prior written consent of the investor majority.
30. The Information Rights provided access to: (a) Minutes Rights, i.e., certified true copies of minutes of the board, committee, and shareholder meetings; and (b) information about any direct changes in shareholding of Biocon and certified true copies of Biocon's latest capitalization table.
31. The Access Rights allowed GS AIF to access the premises and personnel of Biocon during normal business hours, upon providing a reasonable prior written notice.
32. Regulation 4 read with Schedule I of the CCI (Procedure in regard to the transaction of Business relating to Combinations) Regulations, 2011, provided certain categories of transactions that were ordinarily unlikely to cause an AAEC in India and therefore did not normally require prior notification to the CCI ("**Schedule I Exemption**"). Item 1 of Schedule I Exemption exempted seeking prior CCI approval for a combination where: (i) an acquirer acquires shares or voting rights that do not entitle it to hold more than 25% of the total shares or voting rights in a target; (ii) the acquisition is made 'solely as an investment' or in the 'ordinary course of business'; and (iii) the acquisition does not result in acquisition of 'control' of the target. Further, explanation to Item 1 Exemption provided that the acquisition of less than 10% of the share capital or voting rights of the target would be considered to be made 'solely as an investment' provided that: (i) the acquirer has the ability to exercise only such rights that are exercisable by the ordinary shareholders of the target to the extent of their respective shareholding; and (ii) the acquirer is not a member of the board of directors of the target and does not have the right or intention to nominate a director on the board of directors of the target and does not intend to participate in the affairs or management of the target.
33. The rights condition implies that the acquirer has the ability to exercise only such rights that are exercisable by the ordinary shareholders of the target to the extent of their respective shareholding. In this regard, GS submitted that the Minutes Right and the Access Right were granted to GS AIF simply as a result of these rights being available to all of Biocon's investors.
34. The CCI observed that in form, such access is not typically allowed to 'ordinary shareholders', and in substance, such access is indicative of GS viewing the transaction as strategic.
35. The CCI observed that through the Minutes Right, GS gained exclusive access to commercially sensitive information deliberated during the Biocon's board meetings including strategic plans, financial data, proprietary technology, business forecasts, and other confidential matters critical to the Biocon's competitive advantage and market position.
36. The CCI observed that GS acquired the OCDs in 2020 with a final maturity date fixed in January 2026, which indicated a significant holding period.
37. The CCI observed that such rights underscore the fact that the transaction was not consummated with the intention to benefit from short-term price movement.
38. The CCI observed that in context of transactions involving shares, the real test for determination of the activity being "frequent, routine and usual" is whether a transaction has been done solely with the intent to get benefited from short term price movement of securities. Further, the CCI observed that an OCB transaction typically involves short-term investments with no rights beyond those of an ordinary shareholder, such as economic and voting rights.

of investment) behind the investments. As such, even minority investments accompanied by mere alleged investor protection rights may trigger notifiability requirements. Hence, as India's merger control regime gets more nuanced, financial investors, in particular the private equity sponsors must scrutinize even routine rights packages through a competition law lens and ensure a comprehensive assessment of deal terms, including side agreements. The compliance cost of missing a filing could be more than just financial.

CCI finds Torrent Power Limited ("TPL") guilty of gun-jumping, but in a rare departure, holds back on the penalty stick³⁹

On January 14, 2025, the CCI issued a gun-jumping order against TPL in relation to its acquisition of 51% shareholding in the Dadra and Nagar Haveli and Daman and Diu Distribution Corporation Limited ("**DNH-DDCL**").

By way of background, the transaction was undertaken as part of the Government of India's initiative to privatize the distribution of power in the power sector. As such, TPL emerged as the successful bidder in a bidding process initiated by the electricity department of Daman and Diu. Upon receipt of SCN by the CCI for failure to notify the transaction despite meeting the jurisdictional thresholds prescribed under the Act (and not qualifying for any exemption), TPL primarily argued that the Joint Electricity Regulatory Commission (for the State of Goa and Union Territories) ("**JERC**") had the exclusive jurisdiction to regulate 'combinations' in the electricity sector and the operation of Act is overridden by the non-obstante provision, in the Electricity Act, 2003 ("**Electricity Act**"), i.e., Section 60 of the Electricity Act.⁴⁰

However, the CCI, based on its decisional practice⁴¹, upheld its jurisdiction in the instant matter and observed that the JERC cannot be said to have exclusive jurisdiction.⁴² Hence, the CCI observed that the Indian merger control regime is mandatory and suspensory and accordingly concluded that TPL failed to notify the transaction in a timely manner.⁴³ Nevertheless, while the CCI observed that TPL cannot be absolved of its obligation to file a notice prior to the consummation of the transaction, given the mitigating factors⁴⁴, the CCI decided not to impose any penalty on TPL.

View: The instant order serves as a reminder that sector-specific statutes do not override the provisions of the

Act. The CCI has reiterated that its jurisdiction extends across sectors, including those governed by specialised statutes such as the Electricity Act. As such, the instant order also serves as a cautionary tale that reliance on sectoral regulations or procedural constraints may not suffice to bypass competition law requirements.

Orders approved under the regular route

CCI clears on-market acquisition of Covestro AG ("Covestro") by Abu Dhabi's 'ADNOC Entities' ("ADNOC Entities")⁴⁵

On December 10, 2024, the CCI approved: (i) acquisition of up to 100% of the share capital of Covestro by ADNOC Entities⁴⁶ by way of an all-cash voluntary public takeover offer to all Covestro shareholders ("**Public Takeover**"); (ii) additional subscription corresponding up to 10% of Covestro's share capital by ADNOC International Germany Holding AG, upon closing of the Public Takeover, by means of a capital increase against cash

39. Combination Registration No. M&A/03/2022/02/CD, *Torrent Power Limited*, order dated January 14, 2025, available at: https://www.cci.gov.in/combination/order/details/order/1520/0/orders-section43a_44.

40. TPL submitted that under Section 60 of the Electricity Act any combination entered into by a licensee in the electricity sector would be regulated by the "appropriate commission", i.e., the JERC, if the combination is likely to cause or causes an adverse effect on competition within the electricity industry. Further, a combined reading of Sections 60, and 173 - 175 of the Electricity Act demonstrated that the legislative intent was to ensure that in the event of a conflict between the Electricity Act and any other legislation, the Electricity Act would have an overriding effect upon all other legislations (including the Act), barring the Consumer Protection Act, 1986, the Atomic Energy Act, 1962 and the Railways Act, 1989.

41. The CCI placed reliance on its observations in the *TPCL Orders* wherein it observed that the Odisha Electricity Regulatory Commission, expressly recognizes the CCI's jurisdiction regarding regulating combinations in the electricity sector and thereby penalized Tata Power Company Limited a nominal amount for gun-jumping and directed it to comply with the provisions of the Act. Combination Registration No. C-2021/03/825, *The Tata Power Company Limited*, order dated March 17, 2022, available at: https://www.cci.gov.in/combination/order/details/order/340/0/orders-section43a_44.

42. The CCI observed that while the Electricity Act is a special statute for the purposes of dealing with electricity matters with focus on the dynamics of the specific sector, the Act is a special statute for regulating competition in the market having a holistic approach focusing on functioning of the markets by increasing efficiency through competition. To this extent, there is no conflict as both these statutes have their respective and mutually exclusive regulatory regimes and attempt shall be made to adopt harmonious construction between the provisions of the two special statutes.

43. The CCI observed that when TPL was announced as winning bidder by JERC, TPL was required to notify the transaction to the CCI and such notification ought to have been made before consummation of the transaction i.e., TPL should have filed the notice with the CCI immediately after issue of Letter of Intent, but before payment of consideration.

44. The mitigating factors considered by the CCI were: (i) TPL's obligation to comply with the strict bid timelines; (ii) failure to abide by the bid timeline resulting in TPL losing its security deposit and right to acquire shares in DNH-DDCL; (iii) ambiguity due to overlapping provisions of the Act and Electricity Act; (iv) the transaction not resulting in AAEC in the relevant market; and (v) full cooperation extended by TPL towards the proceedings before the CCI.

45. Combination Registration No. C-2024/11/1204, *ADNOC/Covestro AG*, order dated December 10, 2024, available at: <https://www.cci.gov.in/combination/order/details/order/1489/0/orders-section31>.

46. Abu Dhabi National Oil Company P.J.S.C., ADNOC International Limited, and ADNOC International Germany Holding AG.

consideration with exclusion of subscription rights of any remaining minority shareholders of Covestro ("**Capital Increase**"); and (iii) through separate and independent transactions, acquisition a total of 9.55% of the share capital of Covestro by ADNOC International Limited through multiple on-market purchases on a regulated German Stock Exchange ("**On-Market Purchase**").

Given that one of the transactions involved on-market purchase, the proposed combination was notified to the CCI post the acquisition of shares through the On-Market Purchase under the recently introduced Section 6A⁴⁷ read with Section 6(2) of the Act. While the parties did not exhibit any horizontal overlap, the CCI noted vertical linkage between the parties in terms of market for supply of anhydrous ammonia by the ADNOC group in the upstream market⁴⁸ and supply of: (i) methylene diphenyl diisocyanate ("**MDI**"); and (ii) toluene diisocyanate ("**TDI**"), by Covestro in the downstream market.

In its competition assessment, the CCI observed that the ADNOC group does not supply anhydrous ammonia to MDI and TDI producers in India and accordingly observed that ADNOC's presence in ammonia segment is irrelevant to the existing operational dynamics of MDI/TDI production in India. Accordingly, the CCI assessed the broader anhydrous ammonia market where it noted that ADNOC group's presence in India was negligible with estimated market share of less than 5%. In relation to the downstream markets, the CCI observed that the MDI and TDI segment in India is led by bigger players exhibiting significant market shares which would continue to provide competitive restraints to Covestro. Hence, the CCI observed that the proposed combination is unlikely to have AAEC in India.

View: The merger control regime in India is suspensory in nature and prescribes a standstill obligation, whereby the parties to a combination are not permitted to consummate any part of the combination till receipt of the CCI's approval. Recognising that such a blanket prohibition is onerous, the Act through its amendment (made effective from September 10, 2024) introduced Section 6A, which seeks to provide relaxation from observing the standstill obligations for transactions involving open offers of listed companies. As evident from the instant order, introduction of Section 6A enables the consummation of time-sensitive market-related purchases without going through the rigors of stringent regulatory requirements of prior approval.

CCI approves Agro Tech Foods Limited's ("ATFL") acquisition of stake in Del Monte Foods Private Limited ("DMFPL")⁴⁹:

On January 21, 2025, the CCI approved: (i) ATFL acquisition of 100% shareholding of DMFPL from its existing shareholders i.e., Bharti entities⁵⁰ ("**Bharti**") and DMPL India Limited ("**DMPL India**"); and (ii) issuance of 20.95% and 14.39% equity shares in ATFL to Bharti and DMPL India respectively, by way of preferential allotment by ATFL, in discharge of its consideration for the DMFPL Acquisition ("**Proposed Transaction**").

The CCI noted that the activities of parties exhibited horizontal overlaps in the broad 'market for the manufacture and sale of packaged foods in India' ("**Packaged Food Market**") and at a narrower level in the snacks segment (further segmented into non-salted sub-segment); ready-to-eat segment; pasta segment; sauces, spreads and dips segment; and edible oils segment.⁵¹ Further, the CCI also noted certain existing and potential vertical linkages between the parties with respect to eight markets.⁵²

47. Section 6A of the Act allows the acquirers to: (i) implement an open offer in accordance with the Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulations, 2011; or (ii) acquire shares or securities convertible into other securities, from various sellers, through a series of transactions on a regulated stock exchange prior to notification to the CCI, and without penal consequences, under the Act, so long as: (a) such acquisition is notified to the CCI within thirty days from the date of first acquisition of shares to the CCI; and (b) the acquirer does not exercise voting rights over such shares or securities (except in matters relating to liquidation/insolvency proceedings) or exercise any influence over the target, until receipt of the approval of the CCI.

48. The CCI observed that that ammonia can be segmented further based on method of supply, i.e., tonnage supplies, bulk supplies, and cylinder supplies or in terms of green ammonia and non-green ammonia, etc.

49. Combination Registration No. C-2024/12/1214, *Agro Tech Foods/ Del Monte Foods*, order dated January 21, 2025, available at: <https://www.cci.gov.in/combination/order/details/order/1502/0/orders-section31>.

50. Bharti Enterprises Limited, Bharti (SBM) Holdings Private Limited, Bharti (RBM) Holdings Private Limited, Bharti (RM) Holdings Private Limited, and Bharti (Satya) Trustees Private Limited on behalf of Bharti (Satya) Family Trust.

51. The CCI also considered the organized segment of the Packaged Foods Market and all its abovementioned segments/sub-segments.

52. It was submitted that DMFPL and ATFL Group exhibit the following vertical overlaps: (i) Packaged Foods Market (upstream) by DMFPL and market for B2C (retail) sales of food and grocery (downstream) by an affiliate of ATFL Group; (ii) Packaged Foods Market (upstream) by DMFPL and market for the business of running, maintaining, and operating restaurant outlets or the food service market (downstream) by affiliates of ATFL Group; (iii) Market for contract manufacturing of packaged foods (upstream) by an affiliate of ATFL Group, and Packaged Foods Market (downstream) by DMFPL; (iv) Market for supply of antioxidants for food applications (upstream) by an affiliate of ATFL Group and Packaged Foods Market (downstream) by DMFPL; (v) Market for supply of aroma chemicals (upstream) by an affiliate of ATFL Group and Packaged Foods Market (downstream) by DMFPL; (vi) Market for supply of flavours (upstream) by an affiliate of ATFL Group and Packaged Foods Market (downstream) by DMFPL; (vii) Packaged Foods Market (upstream) by DMFPL and market for the provision of third-party logistics services for retail business/food service (downstream) by an affiliate of ATFL Group; and (viii) Packaged Foods Market (upstream) by affiliates of ATFL Group and market for the business of running, maintaining, and operating restaurant outlets or the food service market in India (downstream) by affiliates of Bharti Entities.

In its competition assessment, the CCI noted that the combined market share of the parties in the Packaged Foods Market including its segments and sub-segments was insignificant (both in the overall as well as the organized segment), except the sauces, dips and spreads segment where the combined market share of the parties was in the range of 0-5% (overall) and 5-10% (organized). With respect to the vertical overlaps, the CCI observed that the presence of the parties in each of the upstream and downstream markets/segments was insignificant except in the market for antioxidants for food applications, where the market share of the ATFL group affiliate was the range of 5-10% but the same was unlikely to raise any foreclosure concerns. Accordingly, the CCI observed that the proposed combination is unlikely to have AAEC in India.

View: This transaction is one of the first transactions to be notified to the CCI under the newly introduced 'Deal Value Threshold'⁵³ ("DVT") criteria involving solely non-cash consideration. Therefore, parties may need to review the structuring of transaction consideration carefully for CCI notification implications.

IndusLaw's Competition team advised ATFL as well as the companies backing it, i.e., Samara Capital and Convergent Finance LLP, and successfully procured unconditional approval of the CCI regarding this transaction.

Orders approved under GCR

A list of the notable combinations approved under the GCR route, i.e., combinations that did not exhibit horizontal, vertical, or complementary overlaps, in Q4 of 2024-25 is set out below:

- a. On February 11, 2025, the CCI approved Robert Bosch GmbH's acquisition of sole control over Johnson Controls International plc's ("JCI") residential and light commercial heating, ventilation and air-conditioning business, including Johnson Controls-Hitachi Air Conditioning Holding (UK) Limited, a joint venture between JCI and Hitachi Limited.⁵⁴
- b. On February 24, 2025, the CCI approved Paloma Rheem Holdings Co., Ltd. acquisition of the entire shareholding of Fujitsu General Limited.⁵⁵
- c. On March 20, 2025, the CCI approved BCSS Iota (A), LLC's acquisition of approximately 51.26% shareholding in a 'HoldCo' (in the process of being set up) from Milacron LLC ("Milacron"). As such, HoldCo will own 100% of Milacron Marketing Company LLC, i.e., the target business (comprising injection molding and extrusion equipment manufacturing and assembly and sale of related aftermarket equipment, parts and services business of Milacron).⁵⁶
- d. On March 20, 2025, the CCI approved acquisition of certain shareholding in Ace Designers Limited by Kotak Strategic Situations India Fund II and Kotak Alternate Asset Managers Limited through a combination of equity shares and compulsorily convertible debentures.⁵⁷

53. The DVT is a part of the larger jurisdictional thresholds used to assess the CCI notification requirement under Section 5 of the Act. Accordingly, transactions where: (i) the global deal value is in excess of INR 2,000 crore (approximately USD 232 million); and (ii) the party acquired, taken control of, merged or amalgamated, has 'substantial business operations in India', need to be notified to the CCI, provided no other exemption is available. With respect to the DVT criterion, the value of transaction is defined expansively and includes "every valuable consideration, whether direct or indirect, immediate or deferred, cash or otherwise". Interestingly, the *de minimis* exemption available to small targets will not be applicable to transactions notifiable under the DVT.

54. Combination Registration No. C-2025/02/1240, Robert Bosch/ Johnson Controls, order dated February 11, 2025, available at: <https://www.cci.gov.in/combination/order/details/summary/1531/0/orders-section31>.

55. Combination Registration No. C-2025/02/1250, Paloma Rheem/ Fujitsu General, order dated February 24, 2025, available at: <https://www.cci.gov.in/combination/order/details/summary/1545/0/orders-section31>.

56. Combination Registration No. C-2025/03/1259, BCSS Iota/ Milacron, order dated March 20, 2025, available at: <https://www.cci.gov.in/combination/order/details/summary/1556/0/orders-section31>.

57. Combination Registration No. C-2025/03/1265, Kotak/ Ace Designers, order dated March 25, 2025, available at: <https://www.cci.gov.in/combination/order/details/summary/1562/0/orders-section31>.

REGULATORY DEVELOPMENTS

The major regulatory developments in competition law in India in Q4 of 2025 are set out below:

CCI releases draft cost regulations – updating the regulations to sync with modern market economics:

On February 17, 2025, the CCI released the draft Competition Commission of India (Determination of Cost of Production) Regulations, 2025 (“**Draft Cost Regulations**”), inviting comments from stakeholders until March 19, 2025.⁵⁸ These Draft Cost Regulations seek to replace the existing regulations, i.e., the CCI (Determination of Cost of Production) Regulations, 2009⁵⁹, and aims to keep the regulations in sync with the evolving of competition law jurisprudence and align them with modern economic theories, judicial interpretations, and international competition law practices.⁶⁰

The Draft Cost Regulations, *inter alia*, propose to replace ‘market value’ with average total cost. The determination of cost is proposed to be amended to comprise, average total cost, average avoidable cost, or long-run average incremental cost. The Draft Cost Regulations, introduced in the wake of the Competition (Amendment) Act, 2023, reflect the CCI’s proactive stance in addressing anti-competitive practices by recalibrating its analytical toolkit to stay attuned to dynamic market shifts and stakeholder consultations.

CCI releases draft conduct rules for its staff – steps taken to strengthen ethical practices

On February 17, 2025, the CCI released the draft Competition Commission of India (Conduct) Rules (“**Draft Conduct Rules**”), 2025 — a first-of-its-kind framework laying down ethical standards and conduct expectations for the CCI officials, inviting comments from stakeholders until April 6, 2025.⁶¹ Given that the CCI officials are generally tasked with handling commercially sensitive information, the Draft Conduct Rules aims to ensure confidentiality in the CCI and set high standards of ethics among the employees. Some of the key features of the Draft Conduct Rules are set out below:

i. Investment Restrictions: CCI’s employees are prohibited from making direct or indirect investments in commodity derivatives, equities, and equity-related instruments, except for mutual funds, non-convertible bonds and non-convertible debentures, initial public offerings and in rights issues in respect of the shares already held by them. This restriction

extends to investments made by spouses, dependent children, and other dependents using funds provided by the employee.

ii. Post-Retirement Employment: Retired employees must obtain prior written approval from the CCI before accepting any commercial employment within one year of retirement.

iii. Confidentiality Obligations: Given the commercially sensitive nature of the information handled by the CCI, the Draft Conduct Rules emphasize the importance of maintaining strict confidentiality and ethical conduct among employees.

The introduction of the Draft Conduct Rules marks a significant step towards strengthening the ethical framework within the CCI. By addressing potential conflicts of interest and emphasizing confidentiality, the CCI aims to bolster public trust, ensure the integrity of its operations, and avoid any information leaks.

58. Available at: <https://cci.gov.in/images/stakeholderstopicconsultations/en/draft-competition-commission-of-india-determination-of-cost-of-production-regulations-20251739789121.pdf>.

59. Available at: <https://www.cci.gov.in/public/images/legalframeworkregulation/en/cci-determination-of-cost-of-production-regulations-20091652175779.pdf>.

60. Available at: <https://www.cci.gov.in/images/stakeholderstopicconsultations/en/background-note1741343065.pdf>.

61. Available at: <https://www.cci.gov.in/images/stakeholderstopicconsultations/en/draft-competition-commission-of-india-conduct-rules-20251741343108.pdf>.

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