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# INDIA COMPETITION LAW UPDATE

VOLUME 4 OF 2018



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## Sectors Covered in this Issue



Energy



Technology



E-commerce



Consumer goods

## SNAPSHOT

**Cartel Guidance from Supreme Court** **1**  
*Imperative to look into market conditions before finding a cartel*

**CCI on Algorithmic Collusion** **2**  
*CCI weighs in on algorithmic collusion in respect of allegations against Ola and Uber*

**Long Term 'Pay or Take' not impermissible** **3**  
*The CCI finds that long term 'take or pay' are justified in high investment sectors like energy*

**CCI amends Combination Regulations** **5**  
*Combination Regulation amended to permit parties to offer modifications at any stage*

**New Chairperson and Member at CCI** **6**  
*New CCI Chairman and Member takes charge*

**The Supreme Court's balancing act on jurisdiction** **7**  
*ELP Insights on the decision on jurisdictional conflict between*

## Cartels and Horizontal Agreements

### Appreciate market realities before arriving at a determination of a cartel – Supreme Court to CCI

On October 1, 2018, the Supreme Court in a significant decision, set aside concurrent findings by the CCI and the erstwhile COMPAT, holding that no cartel could exist in the market for supply of Liquefied Petroleum Gas Cylinders (“LPG cylinders”) to the IOCL.

Both the CCI and the COMPAT had found that the suppliers of LPG cylinders had cartelized by rigging prices in bids.

In its detailed decision, the Supreme Court held:

- Before concluding that identical conduct is a result of collusion, there is a requirement to examine the prevailing market conditions and to determine whether *market conditions support the findings of collusion*.
- The Supreme Court considered the prevailing conditions in the market of supply of LPG cylinders and *concluded that the market was a oligopsony with the determination of price entirely in control of the buyer i.e., IOCL*. This ruled out any possibility of price variation and made the bids obvious.
- *Parallel behaviour in this case was not a result of collusion but on account of the complete control of the buyer i.e., IOCL on determination of price*.

The judgment of the Supreme Court can be accessed [here](#)

### Leniency application by Eveready fails to establish cartelisation

On November 6, 2018 the CCI dismissed the leniency application filed by Eveready Industries India Ltd. (“Eveready”), holding that no cartel existed between Eveready, Panasonic Energy India Co. Ltd. (“Panasonic”), Indo National Ltd. (“Nippo”) and Geep Industries (India) Pvt. Ltd. (“Geep”) in the market for sale of flashlights in India.

Interestingly, despite the leniency applications under CCI (Lesser Penalty) Regulations, 2009 by Eveready and Panasonic, contravention of provisions of Section 3 could not be established.

Some of the key takeaways from the CCI’s order

- *Filling of leniency application does not amount to admission of contravention*: despite the admission of two of the parties regarding sharing of confidential information, the CCI held that there was no evidence to indicate a contravention of Section 3(3) of the Act.
- *Mere sharing of information may not amount to cartelization*: The CCI held that sharing of information alone, without evidence of price fixation, cannot indicate a violation of provisions of Section 3 of the Act. However, sharing of confidential information amongst the parties may raise a possibility of collusion or may be considered as a plus factor.
- *Each product is a separate market*: The CCI held that even if two products are complementary products, they would still be considered as separate products for the purpose of the Act and would not necessitate common investigation.

The CCI’s order can be accessed [here](#)



## Cartels and Horizontal Agreements

### The CCI finds use of pricing algorithms by cab aggregators does not imply collusion

On November 6, 2018, the CCI closed another case against Uber India (and its parent entities) and Ola finding no prima facie case of contravention of the Act by Ola and Uber.

The informant raised three separate, interesting allegations against Ola and Uber: (a) Ola and Uber use their algorithms to facilitate collusion between the taxi drivers; (b) Ola and Uber fix minimum price that the drivers can charge leading to resale price maintenance; and (c) owing to information asymmetry, i.e. cab aggregators viz., Ola and Uber possess considerable personalised information about every rider, and as such, are able to charge discriminatory (customised) prices to the disadvantage of the riders.

In the dismissing the information, the CCI made the following observations:

- **Fixing price** through **an algorithm** by two platforms **does not imply collusion** unless it can be shown that:
  - there is an agreement between all drivers to set prices through an app; or
  - an agreement between the two platform (Ola and Uber) to coordinate prices between themselves.
- The apps provide a composite service emanating from the pricing algorithms, have sole control over prices charged to the customers and therefore there is no resale of services. As such allegation of resale price maintenance is not made out.
- With dynamic pricing adopted by Ola and Uber through use of algorithms in certain cases, prices might be lower than actual market prices. As such there is no minimum floor set by Ola or Uber to lead to resale price maintenance.
- In the past, both CCI and ECJ have considered Uber and Ola to be service providers and not mere aggregators.
- Mere initiation of investigation by another competition authority does not necessarily/automatically warrant an action under the Act.

The CCI order is available [here](#)

### Algorithmic collusion in other jurisdictions

Algorithmic collusion has recently captured the attention of various regulators. Some of the notable reactions are:

- **Australia:** Even though Australia has not seen any anti-competitive algorithms which require an enforcement response beyond what is available in its law, Australia, in 2017 amended Section 45 of the Competition and Consumer Act 2010 to protect its market against big data e-collusion. The scope of the section was expanded from exclusionary conduct to include concerted practice as well.
- **European Union:** To a large extent, pricing algorithms can be analysed by reference to the traditional reasoning and categories used in EU competition law. Main principles: (i) if pricing practices are illegal when implemented offline, there is a strong chance that they will be illegal as well when implemented online and (ii) firms involved in illegal pricing practices cannot avoid liability on the grounds that their prices were determined by algorithms.
- **United States:** a core principle of free market competition is that firms adjust pricing in response to competitive conditions, including the prices charged by competitors. Price movement up or down more quickly in response to competition or consumer demand through the use of computerization does not change this basic principle. Absent concerted action, independent adoption of the same or similar pricing algorithms is unlikely to lead to antitrust liability even if it makes interdependent pricing more likely.

## Abuse of Dominant Position

### Long-Term 'take or pay' clauses in contract energy sector are not inherently anticompetitive

On November 8, 2018, CCI found that GAIL had not abused its dominant position, dismissing 10 identical complaints filed by the buyers of Re-gasified Liquefied Natural Gas ("RLNG"). Notably, the DG conducted investigations in only 7 complaints.

GAIL entered into a Gas Supply Agreement ("GSA") with each of its buyers for supply of RLNG. The buyers alleged, that GAIL's conduct and certain terms in the GSA were unfair. Being dominant in the market for supply of natural gas, this was alleged to be an abuse of dominant position.

The CCI while finding GAIL to be dominant did not find its conduct to be abusive. Some of the key takeaway from the CCI's order are:

- **Long term contracts are not inherently anticompetitive:** CCI found such contracts to be common in the energy sector, which is characterised by significant upfront investment. In such sectors, long term contracts help address the "hold-up" problem.
- **Take or Pay clauses are not inherently anticompetitive:** The necessity for such clauses was recognised with a need to examine them on an individual basis. Limiting its role, the CCI clarified that it will not inquire into the manner of determination of liability under the clause, which, as per the CCI was within the domain of another competent agency (i.e., the civil courts).
- **Technical breach of contractual agreements:** The CCI clarified that technical breaches or non-compliance, where no prejudice or loss is caused will not lead to contravention of Section 4 of the Act.
- **Examination of negotiated agreements:** In case of negotiated agreements, the prevalent circumstances, the conduct of the party raising the competition concern, is relevant. While examining abusive conduct, acquiescence by the party allegedly affected or, the benefit derived by them are relevant.

The CCI's order can be accessed [here](#)

### Investigations initiated by the CCI

#### *Rounding-off the fare causes trouble for Indian Railways*

On November 9, 2018, the CCI initiated investigation against the Indian Railways and the Government controlled, Indian Railway Catering and Tourism Corporation Ltd. The CCI initiated investigation into a commercial circular issued by the Ministry of Railways directing rounding off the base fair to the next Rs 5. The CCI, found that rounding off the base fair in e-sale of ticket, prima facie, resulted in unfair imposition of price and was an act of abuse of dominance.

The CCI's order can be accessed [here](#)

#### *Intel faces 2nd investigation on allegation Denial of Access*

On November 9, 2018, the CCI ordered an investigation against Intel for abuse of dominance on grounds of alleged refusal to deal. The CCI found that Intel's refusal to provide access, in a non-discriminatory manner, to the complete set of files necessary for the informant to design its own server-boards which are compatible with Intel's processor, resulted in prima facie denial of market access. Notably, the CCI was driven to direct investigation due to absence of cogent explanation from Intel as to why the relevant files could not be provided to the Informant.

The CCI's order can be accessed [here](#)

## Vertical Agreements

### The CCI assesses distribution agreements in line with effect on market

In two separate orders, on different complaints, the CCI dismissed information filed by distributors against smartphone manufacturers, Vivo Communication Technology Company (“Vivo”) and OPPO Mobiles MU Private Limited (“Oppo”).

Various clauses of the distribution agreements signed by both the smartphone manufacturers were challenged before the CCI, including territorial restrictions, restriction on online sale, exclusivity and resale price maintenance. The CCI however, found no prima facie evidence of contravention of the Act.

Some interesting points that emerge from the CCI’s orders are:

- **Territorial restraints:** Clauses restricting the right to trade within the demarcated region is not prohibited per se, unless, it causes an appreciable adverse effect on competition. Some parameters to test such restraints:
  - Does the clause create any barriers to entry in the market, or drive the existing competitors out of the market, or foreclose the market by hindering competition?
  - Does it restrict passive sales i.e. sales to consumers approaching the distributor from outside the geographical location, is permitted?
  - Does it restrict distributor from dealing with other brands outside the demarcated region?
  - What impact does it have on intra and inter-brand competition in the market?
- **Restrictions on online sales:** While the Commission did not find the restriction on online sale to cause an effect on intra or inter-brand sale given the vibrant competition in the market, it did say that protection of intellectual property is not a valid justification for prohibiting online sale.
- **Exclusivity:** restrictions on dealing with other brands of smartphones are permissible if they are found to be proportionate restrictions to protect intellectual property rights.
- **Evidence required to establish resale price maintenance:** Resale price maintenance i.e., fixing of floor prices will be a concern. However, such allegations would have to be supported by evidence of show such imposition.
- **Prior approval for appointment:** requiring distributors to take an approval from the manufacturer before appointing the retailer is justified and not a contravention of the Act.
- **Vibrant intra and inter brand competition in the market for smartphones:** The CCI’s findings are driven largely by the vibrant competition both, inter and intra-brand, in the market for smartphones in India. In fact, Oppo and Vivo had small market presence of 11 to 14%.

The CCI orders are available [here](#) and [here](#)

## Merger Update

### Voluntary commitments secure acquisition of Fortis

By its order of October 29, 2018, the CCI approved the acquisition of Fortis Healthcare Limited (“Fortis”) by IHH Healthcare Berhad (“IHH”), through its subsidiary Northern TK Venture Limited (“Northern”).

Given, that IHH and Fortis both provide healthcare services in India the CCI assessed the impact of the acquisition in primary, secondary, tertiary and quaternary services. After assessment of the market share of the parties, the CCI concluded that it did not raise any competition concern in any of the market.

However, the CCI noted that IHH, through its subsidiary has a joint venture with Apollo Healthcare Enterprise Limited (“Apollo”) viz., Apollo Gleneagles Hospital. To alleviate any potential concern of the joint venture providing a platform for coordinate behaviour between Fortis and Apollo, IHH gave certain voluntary commitments, including implementing a “rule of information control” to prevent the possibility of exchange of sensitive between Fortis and Apollo. IHH also undertook to provide annual certificate of compliance with the commitments.

The CCI’s order can be accessed [here](#)

### Strong competitors aid in approval of Disney’s acquisition of Fox

By its order of August 10, 2018, the CCI approved the acquisition of Twenty-First Century Fox (“Fox”), including its film and television studios, cable and international TV business by Walt Disney Company (“Disney”). The parties are present in India through their subsidiaries.

In its assessment, the CCI considered both horizontal and vertical overlaps between the parties and noted that due to insignificant presence of the parties; the presence of significant competitors; the exercise of competitive constraint on Disney; and Fox by third party content distributors, the instant transaction would not cause an AAEC in the relevant markets.

The CCI’s approval comes in the wake of approvals across other jurisdictions as well. Competition regulators in China, South Africa and Philippines have also approved acquisition without directing divestiture. However, Fox will have to divest 22 regional sports networks in the US and Disney would have to divest its interest in factual channels like History, H2, Crime & Investigation in the EU. Approval from some jurisdictions, like Brazil is still pending.

The CCI’s order can be accessed [here](#)

### The CCI amends the Combination Regulations

By notification dated October 09, 2018, the CCI amended the Competition Commission of India (Procedure in Regard to the Transactions of Business Relating to Combinations) Regulations, 2011 (“Combination Regulations”). These amends come after public comments were invited by the CCI to the suggested amendments. Some notable changes are:

- **Withdrawal and refiling of notice** – The parties, can now any time before the initiation of a Phase II review, approach the CCI with a request to withdraw and refile their notice.
- **Modification can be offered by parties before and after issuance of a show cause notice** – The inclusion of this sub-regulation formalizes the practice of offering voluntary modifications by the parties both before and after the issuance of a show cause notice by the CCI.

Notably after comments were received, the CCI decided not to amend the investment only exemption provided under Item 1, Schedule I. The amendment envisaged would have, inter alia, required the private equity funds to notify the acquisition of even a small non-controlling stake, if they already have investments in a related sector.

The amended regulations are available [here](#)

## Legislative/Policy Update

### A relook at the Act

The Government constituted a Competition Law Review Committee to review the Competition Act, 2002. This development, as reported in a press release from the Ministry of Corporate Affairs ("MCA"), is to bring the Act in tune with the dynamic business environment and re-calibrate it to promote international best practices for anti-trust and merger laws as well as cross border competition issues. Other than this, the Committee will focus on other regulatory regimes, institutional mechanisms and government policies which overlap with the Act. The Committee comprises of nine members including the Secretary and Joint Secretary of the MCA, Chairpersons of both CCI and IBBI, prominent lawyers and academicians.

With the operative provisions of the Act being brought into force in May 2009, the review comes at the close of nearly a decade of enforcement. The review seeks evaluate and address the challenges faced in the past 10 years and also assess (with the benefits of the experience in the previous 10 years) the nature of problems that are likely to arise in the future and how best can the Act and regulator be equipped to deal with them.

The copy of the MCA press release can be accessed [here](#)

#### CCI gets a new Chairperson and member

Mr. Ashok Kumar Gupta, a 1981 batch IAS from the Tamil Nadu cadre has been appointed as the new Chairperson of the CCI. Appointed on 09 November 2018, Mr. Gupta has previously served on the Department of Defence Procurement.

Further, Ms. Sangeeta Verma, a 1981 IES officer was been appointed as member of the CCI on 24 December 2018. Ms. Verma retired as a Principal Advisor to Government of India (Department of Consumer Affairs).

### The CCI on making markets work for affordable healthcare

On November 01, 2018, the CCI shared its policy note on pharmaceutical market, titled "Making markets work for affordable healthcare."

With the CCI having received over 52 cases in pharmaceutical and healthcare sector, it observed that "this sector required optimal regulation to ensure affordable and quality healthcare for the consumers."

The Policy Note identifies four major issues in pharmaceutical and healthcare sector:

- *Role of intermediaries* leading to higher prices of drugs.
- *Quality perceptions* behind proliferation of "branded" generics which may be aimed at introducing artificial product differentiation.
- *Vertical arrangements and lack of transparency* especially in area of diagnostics.
- Regulation of *Pharmaceutical sector* and *competition*.

Some significant observations that emerge from the Policy Note,

- Recognition of requirement to create a level playing field between *online and offline platforms for the sale of drugs*.
- Plight of the Generic Drug manufacturers who are caught in the *litigations due to filling of injunctions by the innovating companies*.
- *Removing obstacles for patients*, using services of a hospital from purchasing standardised products from the open-market.

The Policy Note can be accessed [here](#)

## ELP Insights

### The Supreme Court's balancing act on jurisdiction

The possibility of 'turf wars' between the CCI and the sectoral regulators has been imminent since 2002 when the Indian Competition Act, 2002 ("Competition Act") was enacted. It was, therefore, not surprising when in the first few years after the provisions of the Act were brought into force, a number of challenges were made to the CCI's jurisdiction. However, the Supreme Court was yet to weigh in on the width and scope on the powers of the CCI under the Act. On 5 December 2018, the Supreme Court, for the first time, in its [decision](#) in *CCI v. Bharti Airtel Limited & Others*, put to rest one such jurisdictional battle regarding CCI's power vis-à-vis the telecom sector regulator. The 'turf war' between CCI and the telecom regulator, had gathered sufficient attention over the past two years, including a rather interesting exchange of letters between the Chairperson of the CCI and the Telecom Regulatory Authority of India ('TRAI').<sup>1</sup>

In its 122-page judgement, the Supreme Court has tried to draw a balance between the jurisdictional reach of the CCI and the TRAI.

#### *Factual background*

The Supreme Court's judgement is in the backdrop of the launch of cellular phone services by Reliance Jio Infocom Limited ("Jio"). Jio alleged that the incumbent rival telecom service providers viz., Airtel, Vodafone and Idea ("Incumbents") were not honouring their interconnection agreements. In particular, Jio claimed that the Incumbents were not providing access to Points of Interconnection ("Pols") and were as such, in violation of the terms of the Unified License issued by the Department of Telecommunication. The allegations were brought to the notice of TRAI, and while a final determination regarding the same was pending, Jio also approached the CCI.

Before the CCI, Jio claimed that the three Incumbents had, inter alia, colluded to delay and/or deny access to adequate Pols to Jio, thereby leading to congestion/call failures on its network. The CCI, after hearing all parties, passed an order under Section 26(1) ("26(1) Order") of the Act directing the Office of the Director General to carry out a detailed investigation into the matter.

The Incumbents challenged this order before the Bombay High Court by way of a writ petition on the ground that the CCI had no jurisdiction on the matter. The Bombay High Court, while allowing the petition, held that the CCI's exercise of its jurisdiction was erroneous. It reasoned that the Act and the Telecom Regulatory Authority of India Act, 1997 ("TRAI Act") were two independent statutes and that the two regulators are required to discharge their functions in accordance with the provisions of their respective statutes. It further observed that the issues arising out of the interconnection agreements and Unified License were to be addressed by the TRAI and until those issues were settled, proceedings under the Act could not have been initiated by the CCI.

The CCI and Jio, both, filed appeals before the Supreme Court challenging the decision of the High Court.

#### *The Supreme Court's decision*

Dealing with the question of whether the CCI had jurisdiction to look into the allegations of collusion amongst the Incumbents, the Supreme Court held that the TRAI Act and the Competition Act are both special acts and primacy has to be given to the respective objectives of both the regulators under their respective statutes. The Supreme Court clarified that the jurisdiction of the CCI is not ousted by the TRAI Act. However, the Court was cognisant that simultaneous exercise of jurisdiction by both could lead to conflicting outcomes and uncertainties.

Having determined that both require primacy and cognisant of the implications of simultaneous exercise of jurisdiction by both, the Supreme Court sought to maintain the balance by adopting the following approach:

- The TRAI, being the expert regulatory body governing the telecom sector, has, in the first instance, powers to decide contractual issues such as obligation to provide POIs, reasonableness of demand for access to POIs, concepts of "subscriber", "test period", "test phase and commercial phase rights and obligations", "reciprocal obligations of service providers" or "breaches of contract".
- Once these "jurisdictional aspects" are straightened and answered by the TRAI, the CCI can exercise its jurisdiction under the Act. The CCI's exercise of jurisdiction is as such, not rejected but pushed to a later stage when the TRAI has undertaken the necessary activity of determining the jurisdictional facts.

The Supreme Court has recognised that CCI's jurisdiction is not excluded by presence of sectoral regulators and to that end, the CCI enjoys primacy with respect to issues of competition law. However, to the extent the Supreme Court holds that despite such primacy, the CCI is "ill equipped to proceed" on account of absence of the determination of "jurisdictional aspects" by a sectoral regulator, the Supreme Court grants to the CCI a 'follow-on' jurisdiction.

<sup>1</sup>The then Chairperson of CCI, Mr. D.K. Sikri wrote to Mr. R.S. Sharma, the Chairperson of TRAI on July 21, 2018 stating that TRAI should not frame rules on predatory pricing. See, CCI to TRAI: Consult us on predatory pricing issues (Livemint, July 28, 2018). Interestingly, the order that had changed the definition of 'significant market power' (SMP) to identify predatory pricing, issued by TRAI was struck down by its appellate authority – the TDSAT. See TDSAT junks Trai's predatory pricing order (Economic Times, December 14, 2018). TRAI has now approached the Supreme Court against the decision of the TDSAT. See, TRAI moves SC against TDSAT order on predatory pricing (Business Today, January 2, 2019)

### *What did the Supreme Court decide and not decide?*

Driven by the twin objective of preventing the implied repeal of one statute by another and preventing conflicting outcomes, the Supreme Court's decision tries to maintain the balance between competition and the telecom regulator.

However, given that the decision is based on the comparison of the regimes and purpose behind the concerned statutes i.e., the Act and TRAI Act, the findings may not, automatically, extend to a conflict qua all statutes and would have to be tested on the basis of the provisions of the statute in question.

In addition, the decision also raises certain interesting questions, which remain unanswered by the Supreme Court:

- **Eroding fact-finding powers:** The 'follow-on jurisdiction' has one relevant implication in that it has eroded the fact-finding powers of the CCI and consequently, the DG in cases where a sectoral regulator exists and is empowered under its parent statute to determine certain "jurisdictional aspects" which are necessary for the CCI to exercise its jurisdiction. Such factual determination of the "jurisdictional aspects" by the sectoral regulator cannot be open for determination by the CCI and consequently would have to be treated as admitted facts by parties, the DG as well as the CCI.
- **What should the CCI do:** Interestingly, while holding that CCI's jurisdiction is only "pushed", the Supreme Court has upheld the Bombay High Court decision of quashing the 26(1) Order. Given that the CCI is empowered under the Act to either pass an order holding that there is no prima facie case of the contravention under the Act (under Section 26(2)) or holding that there is a prima facie case of contravention under the Act (under Section 26(1)), the Act does not appear to provide a statutory basis for CCI to pass an appropriate order, where it has 'follow-on' jurisdiction. This does beg the question of what course the CCI would adopt and if that can find place within the four walls of the statute.
- **Pendency before sectoral regulator:** In the matter before the Supreme Court, Jio had already approached the TRAI which was seized of the matter. The question then is, how should the CCI act on an information where the relevant sectoral regulator has not been approached by any of the parties. A reading of the decision suggests that even in such cases the CCI cannot exercise its jurisdictions under Section 26(1) of the Act as the jurisdictional facts must be decided by the sector regulator who has the jurisdiction and expertise on the subject. However, this may raise some complications, where the sectoral regulator has not been approached at all, and where the aggrieved party before the CCI cannot approach the sectoral regulator for technical reasons such as lack of cause of action or locus standi. Making the CCI's exercise of jurisdiction under the Act completely dependent on the first step being taken by a sectoral regulator, may also render it completely infructuous, with the alleged anti-competitive conduct potentially perpetuating irreversible adverse effects on the market.
- **Implication of Section 21 and 21A<sup>2</sup> of the Act:** Section 21A of the Act may provide a response to some complications that the Supreme Court's decision raises. In cases where the sectoral regulator is not seized of the matter, the CCI can certainly resort to Section 21A and pass an order or reference under Section 21A. The Supreme Court's decision does not seem to bar the exercise of the CCI's powers under Section 21A. However, would an opinion rendered under Section 21A, which is likely to be non-binding, fulfil the requirement of "jurisdictional aspects being answered"? More pertinently, there is little clarity on the procedure the sectoral regulator will adopt to respond to references from the CCI under Section 21A. Further, it seems unlikely that a regulator would offer its opinions without hearing the relevant parties and adhering to due process which in effect would be similar to the approach adopted by the Supreme Court (i.e. process adopted for determining a lis independently by the regulator). In a given case, timely intervention by the CCI may be necessary and it is not clear whether Section 21A would enable the CCI to do so.
- **When has the sectoral regulator "answered" the "jurisdictional aspects":** Another issue that arises for determination is till what stage should the CCI's exercise of jurisdiction be kept in abeyance? In the facts of the case, the TRAI had in fact issued a recommendation to the DOT in October 2016 and the CCI was approached only subsequently in November 2016. However, the recommendation was challenged in a writ petition and TRAI was also asked to reconsider its recommendations by the DOT, implying that it was still "seized" of the matter when the CCI passed its 26(1) Order. The Supreme Court's decision in these facts, appears to indicate that the CCI would have to wait for a final determination of the "jurisdictional aspects" after all rights of redressal have been availed. This approach, however, may lead to a belated exercise of jurisdiction by the CCI leading to possibilities of irreversible harm to competition. This also does not seem to be in consonance with the mandate of Section 21A of the Act where an opinion from the sectoral regulator is sufficient for the CCI to record its findings.

### *Concluding thoughts*

While the pragmatic approach of the Supreme Court is commendable, the decision does leave some relevant issues open. Pertinently, the Supreme Court misses the opportunity to demarcate the relevance and powers of the CCI under Section 21A which the CCI, unfortunately, has seldom used. The decision of the Supreme Court is a good starting point for a future bench to iron out some of the wrinkles which it leaves.

<sup>2</sup> Section 21 and 21A of the Act seek to address issues of sectoral overlap. Under Section 21 a statutory authority when dealing with an issue which may have implications under the Act can make a reference to the CCI for its opinion. Conversely, under Section 21A the CCI can make a reference to statutory authority where a decision by the CCI could be in conflict with the statute whose implementation is entrusted with the statutory authority.



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