



# COMPETITION LAW & POLICY NEWSLETTER

Quarter 2 of 2023

## SECTORS COVERED IN THIS ISSUE



Banking &  
Finance



FMCG



Logistics



Mining &  
Metals



Services



Technology

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### Merger Control

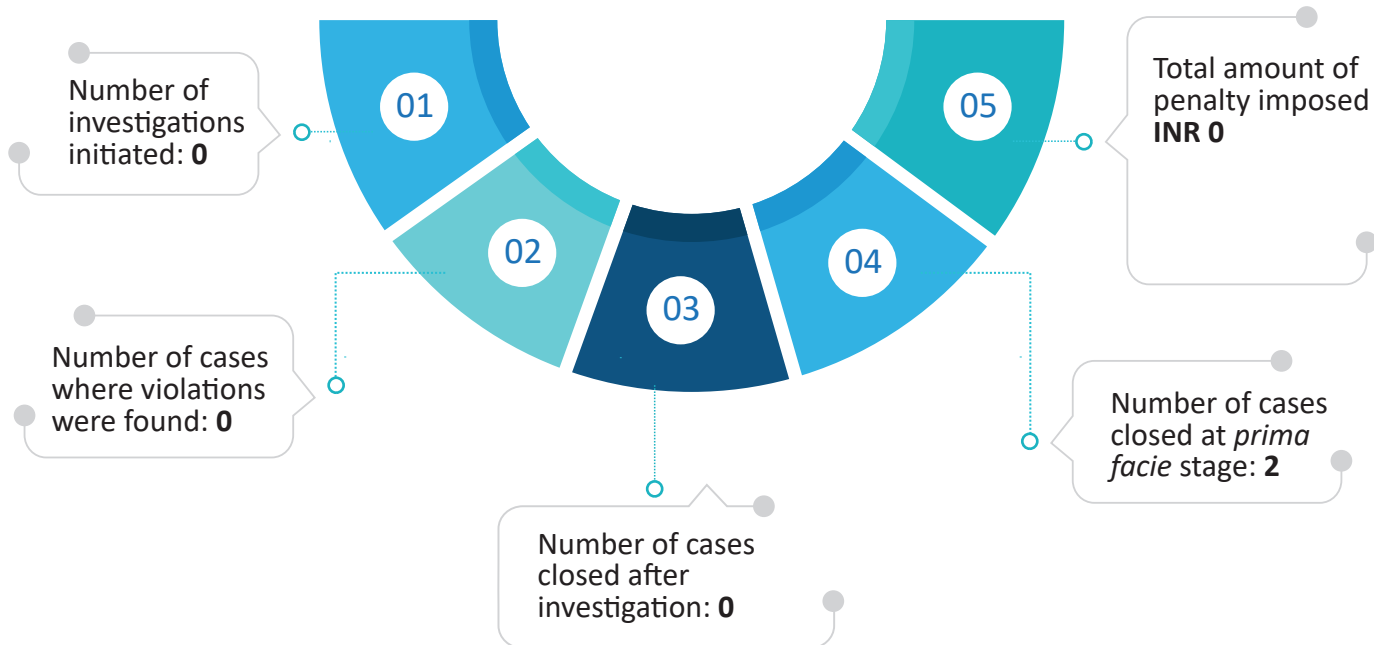
- CCI approves combination of Hindusthan National Glass & Industries Limited and AGI Greenpac Limited with modifications.
- CCI imposes a penalty on Bank of Baroda for gun jumping.

### Other Key Developments

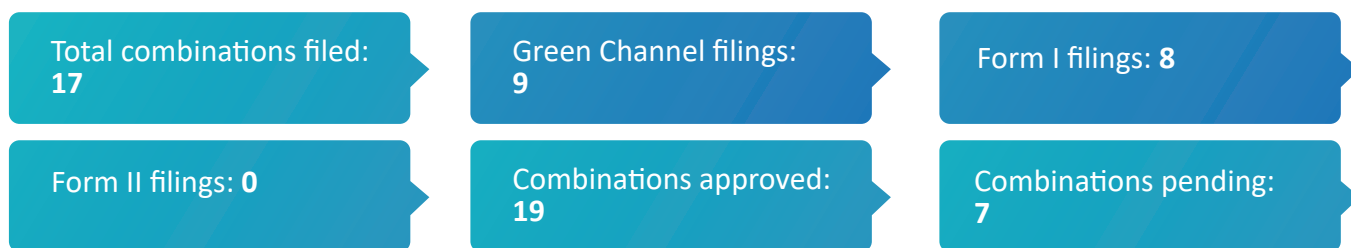
- Mrs. Ravneet Kaur appointed as the Chairperson of the CCI.
- Memorandum of Understanding between the CCI and the Egyptian Competition Authority.

# A QUICK SNAPSHOT

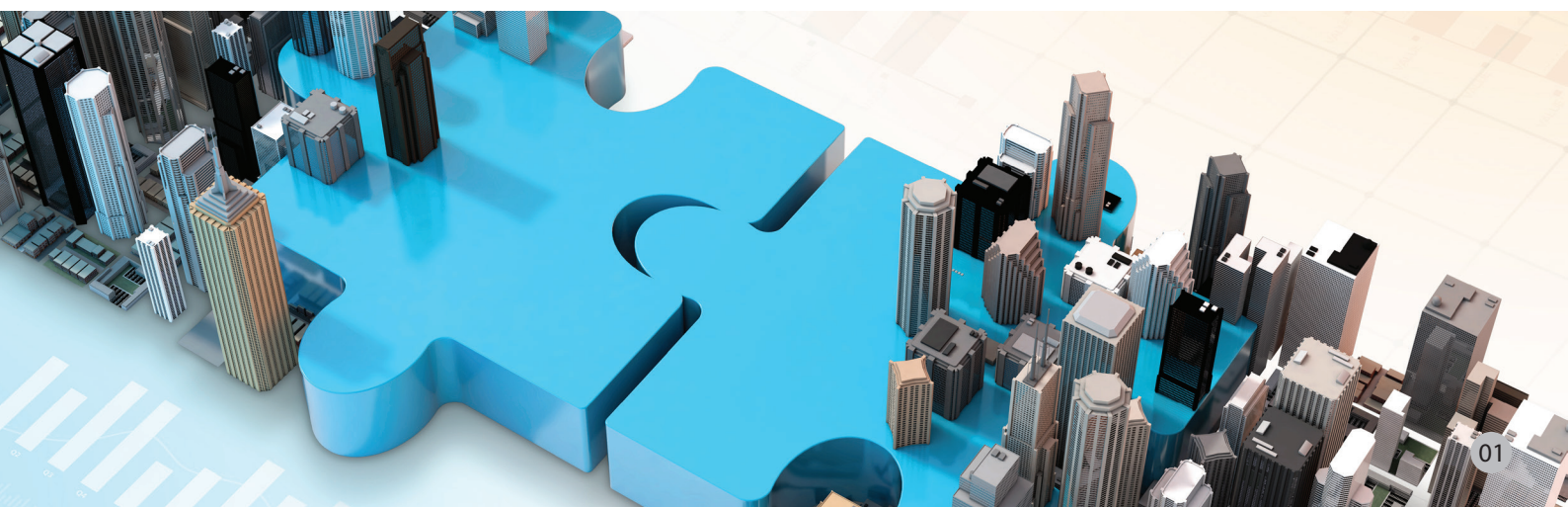
## Enforcement Matters<sup>1</sup>



## Mergers & Acquisitions



<sup>1</sup> Due to the absence of a quorum at the CCI in the first half of this quarter, adjudicatory orders (other than approval of notified combinations under Section 5 and 6 read with Section 31 of the Competition Act), were not passed by the CCI.



# ENFORCEMENT

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## #1 Supreme Court stays the CCI's recovery of penalty; grants interim relief to Amazon.

01

On June 13, 2022, the National Company Law Appellate Tribunal (**NCLAT**) upheld the order of the Competition Commission of India (**CCI**) directing Amazon Seller Services Pvt. Ltd. (**Amazon**) to file a fresh notice for its investment in Future Coupons Private Limited (**FCPL**) and imposing a penalty of INR ~202 crores on Amazon for suppressing the purpose of the transaction and failing to notify arrangements that were part of the transaction.

02

In September 2022, an appeal filed by Amazon before the Supreme Court (**SC**) was first listed.

03

On April 25, 2023, a notice was issued by the CCI to Amazon (**CCI Notice**). As per *media reports*, this was a demand notice directing Amazon to pay the penalty.

04

In May 2023, Amazon filed an application in its appeal before the SC, seeking a stay on further steps to be taken by the CCI.

05

On May 8, 2023, the SC granted a stay on the CCI Notice issued to Amazon.

06

The Appeal is likely to be listed for hearing before the SC in July 2023.

The order of the SC can be accessed [here](#).

## #2 Supreme Court holds that activities of Coal India Limited can be examined under the Competition Act, 2002.

On June 15, 2023, the SC dismissed the appeal filed by Coal India Limited (**CIL**) and its subsidiary, Western Coalfields Limited, (**Appellants**) dismissing the contention of the Appellants that the Competition Act, 2002 (**Competition Act**) is not applicable to them.

The primary contention of the Appellants was that they do not fall within the purview of the Competition Act as its objectives, including ensuring freedom of trade, do not correspond with the Coal Mines (Nationalisation) Act, 1973

(**Nationalisation Act**), under which the ownership and control of coal mines vest with the State. The Appellants also argued that they operate as the extended arm of the welfare State and the CCI's powers to examine abuse of dominance would go against the welfare policy relating to pricing and distribution of coal.

The SC dismissed the appeal observing that:



CIL being a 'government company' under the Companies Act, 1956 would be squarely covered within the definition of 'enterprise' as the Competition Act is clearly intended to apply to government bodies including government companies, public sector undertakings (**PSUs**) etc.



The purpose of the Competition Act would be defeated if state monopolies like government companies and PSUs can act in a discriminatory manner.

The order of the SC can be accessed [here](#).

## #3 The Delhi High Court and Madras High Court grant reliefs in petitions challenging Google's play store billing policies.

On October 25, 2022, the CCI found Google's Play Store Billing Policy (**GPBS**) to be in contravention of Section 4 of the Competition Act (**Final Order**). The CCI imposed a penalty on Google entities and directed compliance with certain remedial directions. ([Link to the previous newsletter summary titled #5 CCI penalizes Google for its anti-competitive Play Store payment policies](#))

After the Final Order, Google launched the user choice billing (**UCB**) for certain app developers and filed a report in compliance with the directions passed by the CCI.

### **Madras High Court**

Matrimony filed a writ petition before the Madras High Court (**Madras HC**) alleging certain non-compliances with the Final Order.

On April 24, 2023, the Madras HC directed Google not to remove Matrimony's apps from the Google Play Store (**Play Store**) for failing to accept the terms of Google's newly introduced UCB. While the Madras HC had initially granted the interim relief till June 1, 2023, it has now extended the stay till the final disposal of the matter.

The order of the Madras HC can be accessed [here](#) with case details as C.S (COMM DIV) No.98 of 2023.

### **Delhi High Court**

The Alliance of Digital India Foundation (**ADIF**) filed applications before the CCI seeking an inquiry into alleged non-compliance of the Final Order by Google, which was not being considered by the CCI due to a lack of quorum. ADIF approached the Delhi High Court (**Delhi HC**) seeking a direction that the CCI consider its applications or restrain Google from launching the UCB till the applications are decided by the CCI.

On April 24, 2023, the Delhi HC directed the CCI to consider the applications filed by ADIF, before April 26, 2023, observing that:

**01** The Competition Act contemplates the composition of the CCI, i.e., Chairperson and not less than 2 or more than 6 members, which is not in the nature of 'quorum' of the CCI but only its composition.

**02** The Competition Act prescribes a quorum for its meetings; however, no quorum is provided for adjudicatory proceedings of the CCI;

**03** Any defect or vacancy in the CCI's constitution would not take away its jurisdiction or invalidate its adjudicatory proceedings.

Google has filed an appeal before the Division Bench of the Delhi HC against the order of the Single Judge of the Delhi HC. The appeal is listed for hearing on July 19, 2023.

The order of the Single Judge can be accessed [here](#) (with case details as W. P. (C) No. 4599 of 2023) and the order passed by the Division Bench can be accessed [here](#) (with case details as LPA 385/2023).

## #4 NCLAT sets aside the CCI's order imposing a penalty on ITC for gun-jumping.

On April 27, 2023, the NCLAT set aside the CCI's order imposing a penalty of INR 5 lakh on ITC Limited (**ITC**) for a failure to notify certain transactions to the CCI.

On November 7, 2016, the CCI sent a notice to ITC directing it to notify the (i) brand purchase agreement dated February 12, 2015, entered into with Johnson & Johnson Private Limited for purchase of 'Savlon' trademark; and (ii) brand purchase agreement dated February 12, 2015, entered into with Johnson & Johnson Pte. Limited for purchase of 'Shower to Shower' trademark (**Transactions**). Upon notification by ITC, through an order dated March 22, 2017, the CCI approved the Transactions. However, the CCI issued a show cause notice to ITC for failing to notify the Transactions and through an order dated December 11, 2017, imposed a penalty of INR 5 lakh on them.

On appeal, the NCLAT did not examine whether the proposed Transactions were 'combinations' requiring notification to the CCI. The NCLAT observed that the Transactions were exempt from notification under the Competition Act as the turnover from the acquisition of 'Savlon' and 'Shower to Shower' trademarks was less than the turnover threshold of INR 1000 crores under the *de minimis* target exemption notification dated March 4, 2016 issued by the Ministry of Corporate Affairs, exempting transactions below certain asset and turnover thresholds from notification to the CCI.

The order of the NCLAT can be accessed [here](#) with case details as Competition Appeal (AT) No. 11 of 2018.



## #5 NCLAT upholds the CCI's decision to not impose a penalty for violation of the provisions of the Competition Act on parties in the railways sector.

On May 16, 2023, the NCLAT upheld an order of the CCI directing the opposite parties to 'cease and desist' from the infringing conduct without imposing a penalty.

The Chief Materials Manager, Eastern Railway, had filed an appeal against the CCI's order stating that the CCI failed to impose an appropriate penalty on parties found liable for contravention under the Competition Act. The NCLAT dismissed the appeal and noted that the CCI is empowered to pass any or all of the orders envisaged under Section 27 of the Competition Act. The NCLAT observed that in the present case, the CCI's discretion to only pass a 'cease and desist' order was well-reasoned.

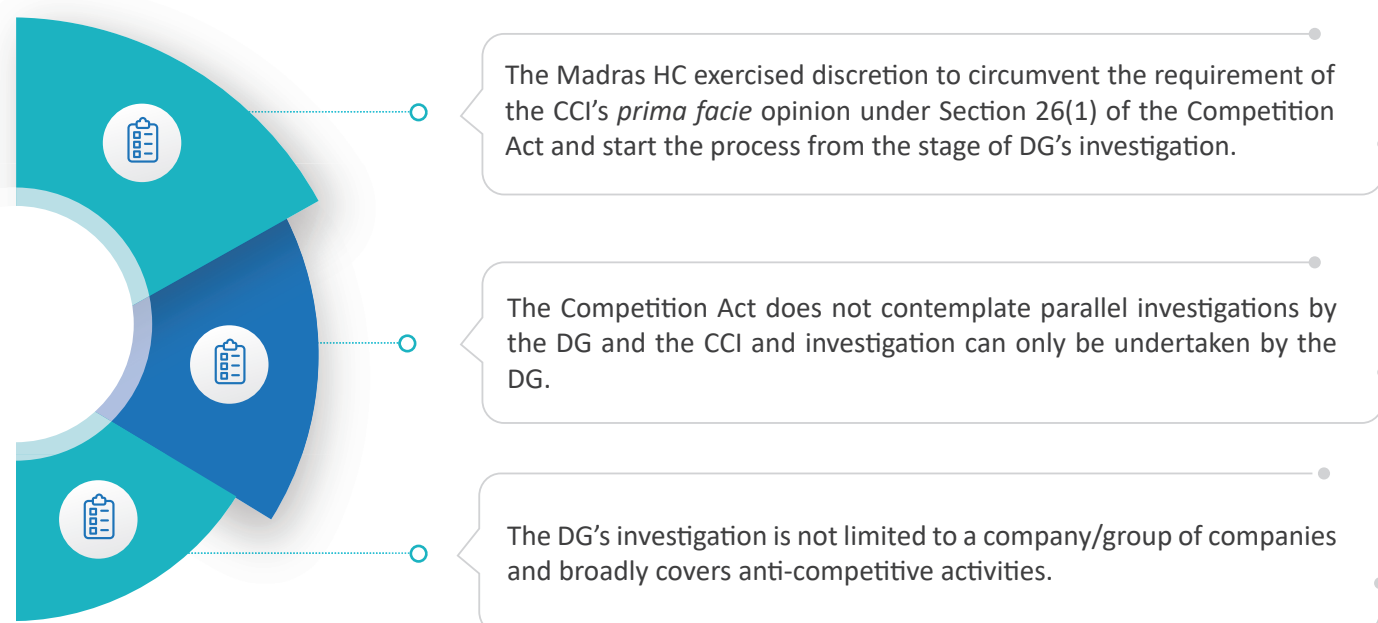
The order of the NCLAT can be accessed [here](#) with case details as Competition Appeal (AT) No. 10 of 2021.

## #6 Calcutta High Court refuses to interfere with the summons issued to Shyam Steel by the DG pursuant to the Madras HC's order.

On May 18, 2023, the Calcutta High Court (**Calcutta HC**) refused to set aside the summons for appearance issued by the DG to an official of Shyam Steel Industries Limited (**Petitioner**).

On July 29, 2021, the Madras HC had directed the DG to proceed on a complaint which alleged profiteering and increase of steel prices by steel companies. During the investigation, the DG issued summons to the Petitioner, which was challenged before the Calcutta HC. Shyam Steel Industries (based out of West Bengal) had approached the Calcutta HC as the Madras HC had disposed of the case.

The Calcutta HC refused to set aside the summons and noted that:



The order of the Calcutta HC can be accessed [here](#) with case details as WPA 10107 of 2023.

## #7 Delhi HC sets aside the CCI order directing an investigation into the Institute of Chartered Accountants of India's 'Continuing Professional Education' program.

On June 2, 2023, the Delhi HC set aside an order issued by the CCI, under Section 26(1) of the Competition Act, directing the DG to investigate practice of the Institute of Chartered Accountants of India (ICAI) of exclusively conducting seminars for its Continuing Professional Education (CPE) programs. The information filed before the CCI alleged that the ICAI is abusing its dominant position as a 'regulator' under Section 4 by restricting the market for conducting seminars for the CPE program exclusively by its own organs.

The Delhi HC set aside the order passed by the CCI under Section 26(1) of the Competition Act observing:



ICAI is an 'enterprise' under the Competition Act as the definition is broad enough to accommodate such an interpretation and the ICAI does not perform any sovereign functions.



Even if it is accepted that the function of regulation of the profession is a 'sovereign function', it is still not a 'government' and hence does not fall within the exception to Section 2(h) of the Competition Act.



ICAI falls within the definition of a 'statutory authority' under the Competition Act. The CCI cannot review the decisions taken by a 'regulator' in the discharge of its regulatory/statutory functions.



The CCI cannot review economic activities which are regulatory functions of statutory bodies.



Exercise of regulatory powers is not subject to review by the CCI.



The CCI cannot compel a statutory body to outsource its functions even though they may fall under the definition of economic activity.

The order of the Delhi HC can be accessed [here](#) with case details as W.P.(C) 2815/2014.

### ELP Comment

The High Courts in India have demonstrated that, through the exercise of writ jurisdiction, they can curtail or even bypass CCI's *prima facie* opinion under Section 26(1) of the Competition Act. The statutory requirement for the CCI to pass a direction for investigation, remains subject to writ jurisdiction of the High Courts.

## #8 Madras HC stays the acquisition of shares by Minda Corporation in Pricol Limited and the CCI's review of Minda Corporation's acquisition.

On May 24, 2023, the Madras HC granted a stay on further acquisitions of shares by Minda Corporation (**Minda**) in Pricol Limited (**Pricol**) and restrained the CCI from reviewing Minda's notification of the acquisition of up to 24.5% of the share capital of Pricol.

Minda had acquired 15.70% of the share capital in Pricol through an open market purchase, which was notified to the Stock Exchange on February 17, 2023. Minda further proposed to acquire additional shares in Pricol, increasing its overall stake in Pricol to 24.5% and subsequently, notified the proposed acquisition to the CCI through a notice dated May 9, 2023.

Pricol had approached the Madras HC on the grounds that the CCI is required to be notified before completion of the acquisition and a subsequent notification would be a violation of the Competition Act, referring to the SC's judgment in *SCM Soilfert v Competition Commission of India* and sought an injunction on further acquisition of its shares by Minda.

The Madras HC noted that Minda did not notify the CCI prior to its proposed acquisition of shares in Pricol as required under the Competition Act. Therefore, Madras HC granted a stay on any further acquisition of shares by Minda and restrained the CCI from reviewing the notification filed by Minda for the acquisition.

The order of the Madras HC can be accessed [here](#).





# MERGER CONTROL

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## #1 The CCI approves combination of Hindusthan National Glass & Industries Limited and AGI Greenpac Limited with modifications.

On March 15, 2023, the CCI approved, with modifications, a proposed transaction between Hindusthan National Glass & Industries Limited (**HNG**), undergoing a Corporate Insolvency Resolution Process (**CIRP**) under the Insolvency and Bankruptcy Code, 2016, and AGI Greenpac Limited (**AGI Greenpac**) (**Notifying Parties**). The proposed transaction includes an acquisition of up to 100% of the equity share capital of HNG by AGI Greenpac.

Upon assessment, the CCI noted that the proposed transaction will lead to an appreciable adverse effect on competition in the container glass packaging market specifically in sub-segments of alco-beverage and F&B, since the Notifying Parties have a significant presence in the relevant markets and the combined entity will also have a large presence in the market. The Notifying Parties claimed that HNG was a failing firm, undergoing CIRP to which the CCI suggested certain structural modifications to the proposed transaction.

To alleviate the CCI's concerns, AGI Greenpac proposed to divest HNG's plant located at Rishikesh (**Divestment Business**) and committed not to acquire any influence over the Divestment Business for 10 years after its sale. The CCI considered the adequacy of the divestment, *inter alia*, and noted that HNG was the market leader and since the combined entity would be present in both alco-beverage and F&B segments, it would be relevant if the Divestment Business is also present in the noted segments. While noting that Divestment Business is present in manufacture and sale of container glass across all segments, the CCI allowed the proposed transaction on the ground that its divestiture will encourage joining of new entrants or augmenting of capacity by an existing competitor in the market.

The order of the CCI can be accessed [here](#).

The order of the CCI has been challenged by the U.P. Glass Manufacturers Syndicate and Independent Sugar Corporation Limited, one of the 3 bidders for the insolvency resolution plans floated before the NCLAT. The appeals are listed for hearing on July 3, July 6, and July 10, 2023 before the NCLAT.

The order of the NCLAT can be accessed [here](#) with case details as Competition Appeal (AT) No. 07 and 08 of 2023.

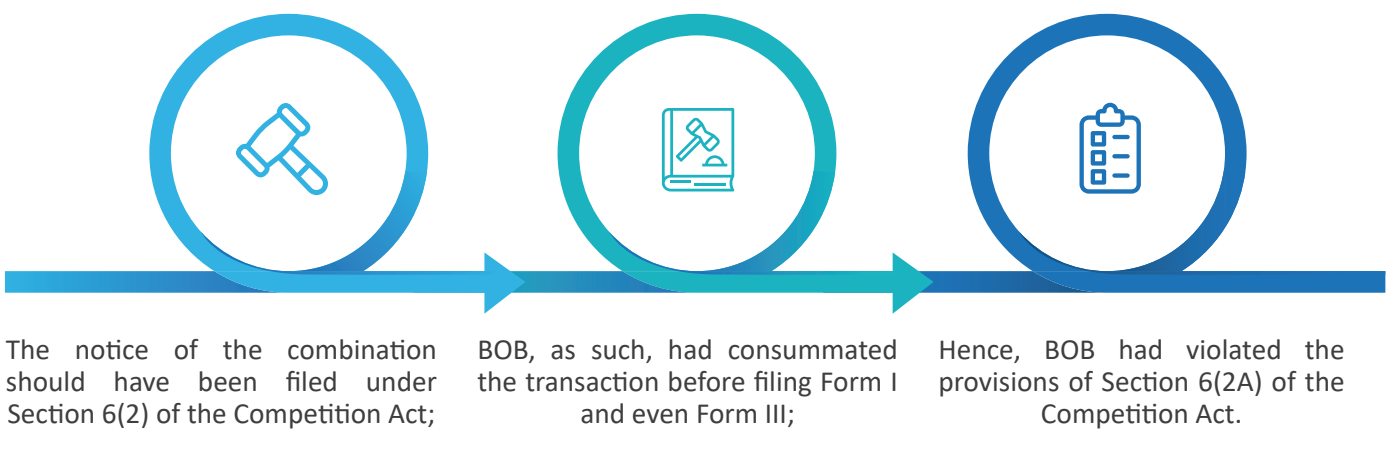


## #2 The CCI imposes a penalty on Bank of Baroda for gun jumping.

On June 20, 2023, the CCI imposed a penalty of INR 5 Lakhs on Bank of Baroda (**BOB**) for failing to notify the CCI of its acquisition of 21% of shares (**Acquisition**) of India First Life Insurance Company Limited (**IFLIC**) from Union Bank of India (**UBI**).

On May 02, 2022, BOB, under the impression that Section 6(4) of the Competition Act was applicable to the Acquisition, had notified the CCI through Form III, filed in case of an acquisition by a public financial institution, foreign institutional investor, bank or venture capital fund, pursuant to any term of a loan or investment agreement. However, on July 11, 2022, the CCI informed BOB that Form III was not applicable for the Acquisition and that the Acquisition should have been notified under Form I instead. BOB complied with the CCI's directions and on August 18, 2022 and notified the Acquisition to the CCI under Form I, which was subsequently approved by the CCI on September 29, 2022. However, during this period, the combination was brought into effect on March 31, 2022.

As such, the CCI noted that BOB had failed to comply with the notifying requirements under Sections 6 and 6(2A) of the Competition Act and issued a show cause notice to BOB and after duly considering the submissions submitted by BOB, the CCI observed that:



While the CCI found BOB to have failed to notify the combinations under Section 6(2) of the Competition Act, it took into account certain mitigating factors including: (a) the absence of any *mala fide* intention to evade compliance under the Competition Act and filing Form III voluntarily; and (b) for extending its cooperation with the CCI by supplying all necessary materials and filing a Form I notice upon being informed of the same. Considering these factors, CCI imposed penalty of INR 5 lakhs on BOB.

The order of the CCI can be accessed [here](#).



## OTHER DEVELOPMENTS

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### #1 Mrs. Ravneet Kaur appointed as the Chairperson of the CCI.

On May 16, 2023, Mrs. Ravneet Kaur was appointed as the Chairperson of the CCI for a period of 5 years.

#### Brief Profile

Mrs. Ravneet Kaur is an officer of the Indian Administrative Service from the Punjab Cadre (1988 batch) and is the first woman and fifth Chairperson to hold the position on a full-time basis. Prior to her appointment as the Chairperson of the CCI, Mrs. Kaur was serving as the Special Chief Secretary in the agriculture and cooperation departments of the State Government of Punjab in Chandigarh, Punjab. She has previously held key positions such as Chairperson of India Tourism Development Corporation and Joint Secretary of Department of Industrial Policy and Promotion.

A profile of Mrs. Ravneet Kaur can be found on the CCI website [here](#).

### #2 Memorandum of Understanding between the CCI and the Egyptian Competition Authority.

- On May 17, 2023, a Memorandum of Understanding (**MOU**) between the CCI and the Egyptian Competition Authority (**ECA**) was facilitated.
- The MOU aims to promote and strengthen cooperation in matters of competition law and policy.
- The MOU will enable the CCI to gain from the experiences and lessons of the ECA.

The press release can be accessed [here](#).





**ECONOMIC  
LAWS  
PRACTICE**  
ADVOCATES & SOLICITORS

## MUMBAI

9th Floor, Mafatlal Centre  
Vidhan Bhavan Marg Nariman Point  
Mumbai 400 021  
T: +91 22 6636 7000

## NEW DELHI

801 A, 8th Floor, Konnectus Tower, Bhavbhuti Marg  
Opp. Ajmeri Gate Railway Station, Nr. Minto Bridge  
New Delhi 110 001  
T: +91 11 4152 8400

## AHMEDABAD

801, 8th Floor, Abhijeet III  
Mithakali Six Road, Ellisbridge  
Ahmedabad 380 006  
T: +91 79 6605 4480/8

## PUNE

202, 2nd Floor, Vascon Eco Tower  
Baner Pashan Road  
Pune 411 045  
T: +91 20 4912 7400

## BENGALURU

6th Floor, Rockline Centre  
54, Richmond Road  
Bengaluru 560 025  
T: +91 80 4168 5530/1

## CHENNAI

No 18, BBC Homes, Flat-7 Block A  
South Boag Road  
Chennai 600 017  
T: +91 44 4210 4863

## GIFT CITY

Unit No. 605, Signature, 6th Floor  
Block 13B, Zone - I  
GIFT SEZ, Gandhinagar 382355  
E: [elplaw@elp-in.com](mailto:elplaw@elp-in.com)



[elplaw.in](http://elplaw.in)



[insights@elp-in.com](mailto:insights@elp-in.com)



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