ECONOMIC LAWS PRACTICE
ADVOCATES & SOLICITORS

Competition Law & Policy Newsletter

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Other Key Developments

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- The CCI publishes revised FAQs on merger control

A quick snapshot

Enforcement Matters

Number of settlements - **1**

Number of cases where violations found - **1**

Number of cases closed after investigation - **1**

Number of cases closed at *prima facie* stage - **4**

Number of investigations initiated - **3**

Total penalty imposed INR **2.72 crore** (~USD **0.31 million)**

Mergers and Acquisitions

Total Combinations Filed **31**

Green Channel Filings **03**

Form I **25**

Form II **03**

Combinations Approved **32**

Combinations Pending **08**

Enforcement updates

#1

CCI imposes penalties of INR 104.03 lakh (~ USD 0.12 million) and INR 168 lakh (~ USD 0.19 million) on UFO Moviez and Qube Cinema, respectively, for entering into anti-competitive agreements.

On April 16, 2025, the Competition Commission of India **(CCI)** issued an order penalizing **UFO** Moviez India Limited **(UFO)**, including its wholly owned subsidiary Scrabble Digital Limited **(Scrabble)** and Qube Cinema Technologies Private Limited **(Qube)** for entering into anti-competitive agreements.

Key allegations

The CCI inquired into practices of UFO and Qube in leasing digital cinema equipment **(DCE)**, which is equipment compliant with digital cinema initiatives **(DCI)**, for displaying digital prints of film. In the information before the CCI, PF Digital Media **(PF Digital)** and Mr. Ravinder Walia **(**together, **Informants)**, alleged that UFO entered into anti-competitive agreements with cinema theatre owners **(CTOs)** to aid Scrabble's business. The Informants alleged that UFO, which is engaged in the supply of DCE, entered into equipment lease agreements with CTOs for supply of DCEs effectively prohibiting CTOs from exhibiting any film that was not processed by Scrabble. This prohibition was alleged to have been achieved by requiring a key delivery message **(KDM)** generated by Scrabble, required for displaying the film on the DCE leased by UFO. As a result of UFO's stipulation, the KDM supplied by PF Digital was allegedly not accepted on the DCE leased by UFO.

Findings

The CCI, agreeing with the Director General's **(DG)** findings, noted that UFO and Qube are players with 'significant influence' in the *'market for supply of DCI-compliant DCE on lease/ rent to CTOs in India'*. The CCI found that UFO and Qube (i) imposed tie-in arrangements by tying in the supply of content with the supply of DCI-compliant DCE on lease; (ii) engaged in exclusive supply arrangements by requiring CTOs to only accept content supplied by them or their affiliates on DCE leased by them and restricting supply of content by other PPP service providers; (iii) engaged in refusal to deal by restricting CTOs from receiving content supplied by their competitors; and (iv) the restraints imposed had an AAEC in the relevant markets on following grounds:

1. The lease agreements clearly stipulated that the DCE provided by UFO and Qube would be used exclusively for exhibiting content supplied by them.
2. The lease agreements conditioned the lease of DCE on procurement of content.
3. Under the lease agreements, CTOs were restricted from dealing with any films other than those processed by Scrabble (UFO's subsidiary).
4. The exclusivity of content with respect to the DCEs leased by UFO and Qube was effected through a DCE encryption as a result of which only a specific KDM generated by these entities would be accepted on the leased DCEs.
5. The KDMs generated by other PPP service providers did not play on the DCEs leased by UFO and Qube.
6. The restrictions imposed by UFO and Qube have created entry barriers in the market, led to market foreclosure, and incurring losses by competitors.

The CCI, having found UFO (along with Scrabble) and Qube to have entered into anti-competitive agreements with CTOs, in addition to imposing penalties of INR 104.03 lakh (~ USD 0.12 million) and INR 168 lakh (~ USD 0.19 million) on UFO and Qube respectively, directed the opposite parties not to re-enter lease agreements with CTOs imposing restrictions on supply and directed certain modifications to the existing lease agreements.

Appeal

UFO and Qube have filed appeals before the NCLAT, against CCI's order. The NCLAT has granted a stay on the payment of penalty, subject to a deposit of 25% of the penalty imposed by the CCI. The NCLAT has, however, not allowed a stay on the CCI's direction to cease the contravening conduct. The appeals are pending before the NCLAT.

The CCI's order can be accessed ***here.***

#2

CCI approves Google's settlement proposal in its inquiry involving the Android TV licensing practices; imposes a settlement amount of INR 20.24 crore (~ USD 2.33 million).

On April 21, 2025, the CCI issued its first order under the newly introduced 'settlements' framework accepting the settlement proposed by Google LLC and Google India Private Limited (together, **Google**), along with a settlement amount of INR 20.24 crores (~ USD 2.33 million).[1]

Investigation and DG's findings

In June 2021, the CCI directed an investigation into Google's licensing practices for Android TV (**ATV**). In July 2023, the DG's report found Google dominant in the 'market for licensable smart TV OS in India' and 'market for app stores for Android smart TV OS in India'. The DG found Google to have abused its dominant position by (i) making the pre-installation of certain Google applications (including the Play store) conditional upon signing the ACC; (ii) offering Play store only as a part of the suite of apps licensed under the Television Application Development Agreement (**TADA**); (iii) compelling OEMs to pre-install a suite of apps to be able to access 'must-have' apps like Google's Play store; and (iv) compelling OEMs to pre-install YouTube as a condition for installing Google's Play store.

Google's settlement proposal

In May 2024, Google submitted its settlement application to the CCI, proposing to: (i) provide a standalone license to Google's Play store and play services for compatible Android smart TV devices sold in India (under a 'New India Agreement'); (ii) eliminate the requirement under the TADA for a valid ACC for devices which are shipped in India without loading Google apps; and (iii) reiterate the existing ability of OEMs to be able to use the open-source Android OS for smart TVs without taking any applications from Google or signing an ACC and develop TVs using other competing OSs such as Tizen, WebOS, and Roku OS.

[1] *An overview of the 'settlements' framework under the Competition Act enforced in March 2024 can be found in our previous alert* ***here.***

CCI's settlement order

The CCI considered comments to Google's settlement proposal from third parties, which were received through the market testing process. The majority order accepted Google's settlement proposal with the following key observations:

1) **Google's settlement proposal addresses the concerns identified in the DG's report.**

2) **Both the New India Agreement (for a standalone license to the Play store) and the amended TADA create more choice for OEMs.**

3) **The five year duration of the settlement proposal appears to be reasonable and timebound.**

4) **Google is directed to submit annual compliance reports for the duration of the settlement proposal.**

Dissent

A single member of the CCI dissented and noted that the dual-option model of either paying for the New India Agreement license or continuing with the license under TADA did not address the DG's concerns and a singular licensing regime should be offered by Google addressing the concerns identified by the DG Report.

*The CCI's order can be accessed **here.***

#3

Kerala High Court reaffirms the jurisdiction of the CCI over competition issues in regulated sectors.

On May 28, 2025, the Kerala High Court **(Kerala HC)** reaffirmed the CCI's jurisdiction to adjudicate upon anti-competitive aspects of a conduct, even if such conduct involves aspects that may be covered under the jurisdiction of another sectoral regulator (in this case, the Telecom Regulatory Authority of India **(TRAI)**). The matter arose from an information filed by Asianet Digital Network Private Limited (**ADNPL**), a multi-system operator, against Star India Private Limited (**SIPL**), a broadcaster, alleging deep discounts by SIPL in violation of TRAI regulations.

January 31, 2022

ADNPL filed an information before the CCI alleging that SIPL has abused its dominant position circumventing TRAI's regulations by offering discriminatory and deep discounts (up to 70%) to its competitor- Kerala Communicators Cable Limited **(KCCL)**, in violation of TRAI regulations, which limit such discounts to 35%.

March-April 2022

SIPL filed a writ, challenging the CCI's jurisdiction before the Bombay High Court (**Bombay HC**), arguing that the issue fell within TRAI's domain.

February 28, 2022

The CCI, in its *prima facie* opinion, found SIPL to be potentially abusive and initiated an investigation.

April 6, 2022

The Bombay HC granted interim relief to SIPL and barred adjudication by the CCI until further orders but directed it to cooperate with the CCI in its investigation.

September 16, 2022

The Bombay HC dismissed the writs, stating lack of jurisdiction in the matter.

September-October 2022

SIPL filed another writ on the same issue in the Kerala HC.

October 6, 2022

The Kerala HC also granted an interim relief to SIPL and barred adjudication by the CCI until further orders but directed it to cooperate with the CCI in its investigation.

Final findings of the Kerala HC

The Kerala HC upheld the jurisdiction of CCI in the present matter. The Kerala HC held that while both the Competition Act and the TRAI Act, 1997 are special statutes, they govern distinct subject matters, *i.e.,* competition and telecom regulation, respectively. It emphasized that the existence of sectoral regulations does not oust the jurisdiction of the CCI to investigate abuse of dominance. Notably, this ruling arguably deviates from the Supreme Court's decision in *CCI v. Bharti Airtel Limited*,[2] wherein the Supreme Court held that the sectoral regulator (such as TRAI) would have primary jurisdiction, and only upon its adjudication on issues of jurisdiction and subject matter, would the jurisdiction of the CCI arise.

The Kerala HC also held that the CCI has the authority to determine whether it or the sectoral regulator should proceed first, particularly given that orders under Section 26 of the Competition Act are *in rem* and do not entail civil consequences. The Kerala HC allowed SIPL to raise the jurisdictional issues before the CCI during the investigation.

The Kerala High Court judgement can be accessed ***here.***

#4

The Supreme Court upholds legality of objective discount policies, and affirms effects-based analysis in abuse of dominance cases.

On May 13, 2025, the Supreme Court dismissed appeals filed by the CCI and Kapoor Glass Private Limited **(Kapoor Glass)**, and upheld the order of the erstwhile appellate tribunal, Competition Appellate Tribunal **(COMPAT)** that had exonerated Schott Glass India Private Limited **(Schott Glass)** of allegations of abusing its dominant position. The case pertained to two rebate schemes offered by Schott Glass: target (volume) rebates and functional rebates (together, **Discount Schemes**), along with a long-term term supply arrangement with a related undertaking operating in the downstream market. Kapoor Glass alleged that these practices led to tying, margin squeeze, foreclosure of the market, and denial of market access.

May 25, 2010

Kapoor Glass, a converter of pharmaceutical glass tubes, filed an information alleging that Schott Glass, a major manufacturer of pharmaceutical glass tubing, had abused its dominance by offering Discount Schemes, imposing discriminatory contractual terms, and refusing supply to the converters.

July 6, 2010

The CCI, in its *prima facie* opinion, found Schott Glass to be abusive and directed the DG to investigate the matter.

March 14, 2011

The DG submitted its report, concluding that Schott Glass had abused its dominant position.

March 29, 2012

The CCI, by a majority order upheld the DG's findings and levied a penalty of INR 5.66 crore (~USD 0.66 million) on Schott Glass.

2012

Schott Glass appealed the CCI's decision before COMPAT.

April 2, 2014

The COMPAT set aside the CCI's order, citing procedural lapses and lack of evidence to establish abuse.

June 24, 2014

The COMPAT set aside the CCI's order, citing procedural lapses and lack of evidence to establish abuse.

[2] *CCI v. Bharti Airtel Limited, (2019) 2 SCC 521*

Findings of the Supreme Court

The Supreme Court held that Schott Glass did not abuse its dominant position by offering Discount Schemes, as they were commercially justified, applied uniformly, and did not have an appreciable adverse effect on competition. The Supreme Court affirmed that an effects-based analysis under Section 4 of the Competition Act is essential for assessing abuse of dominant position. It observed:

1. Effects-based analysis

Effects-based analysis, *i.e.*, establishing adverse impact of the abusive practice on competition is mandatory under Section 4 of the Competition Act. In the present case, the CCI failed to demonstrate actual or likely adverse impact of the discount schemes on the competition.

2. Objectively justified Discount Schemes

Volume-based or functional-discount schemes are not violative of Section 4 of the Competition Act, provided that they are based on objective commercial justifications, are available to all similarly placed purchasers, and do not result in exclusionary effects.

3. Margin squeeze

The long-term supply arrangement with a downstream entity did not result in a margin squeeze, as the necessary components were not fulfilled. The Supreme Court clarified that a margin squeeze arises when a dominant entity operates downstream; leaves insufficient margins for equally efficient competitors; and the margin compression threatens competitive harm. In this case, the downstream entity was not directly related to Schott Glass, and thus Schott Glass did not operate in the downstream market. The margins left with other converters were also held to be sustainable and the market did not exhibit signs of competitive harm.

4. Tying

The Supreme Court held that the discount schemes did not amount to a tying arrangement since the products in question were neither distinct nor were the converters compelled to buy both the products.

5. Procedural lapses

The CCI's reliance on statements from interested third parties without conducting cross-examination constituted a material procedural lapse, undermining the reliability of the evidence.

*The Supreme Court judgement can be accessed **here.***

#5

The Supreme Court upholds CCI's discretion in referring combinations for further investigation.

On May 16, 2025, the Supreme Court passed its judgments in the review petitions filed by parties including the CCI and AGI Greenpac Limited **(AGI)** against its judgment dated January 29, 2025. In its previous judgment, the Supreme Court had held that upon issuing a show cause notice to review a combination, the CCI is mandatorily required to direct an investigation and then undertake a stakeholder consultation.

In its review order, the Supreme Court held that once the CCI formed a *prima facie* view that a combination is likely to cause an AAEC, it was not mandatory for the CCI to direct an investigation by the DG or undertake a stakeholder consultation. The Supreme Court's order is significant as it aligns with the text of the statute and would not unnecessarily delay merger reviews by the CCI.

*The Supreme Court judgment can be accessed **here** and a detailed ELP alert **here**.*

Other Developments

#1

CCI issues the Competition Commission of India (Determination of Cost of Production) Regulations, 2025.

On May 6, 2025, the CCI notified the Competition Commission of India (Determination of Cost of Production) Regulations, 2025 **(Regulations)**, repealing the previous Competition Commission of India (Determination of Cost of Production) Regulations, 2009.

Determination of 'cost'

Under the Competition Act, for assessment of predatory pricing allegations, the CCI is required to determine 'cost' of the relevant product or service. 'Cost', under the previous regulations and the current Regulations, is determined as the 'average variable cost' (i.e. total variable cost divided by the total output). The determination of such 'average variable cost' is based on the total 'cost' less fixed costs and overheads. The current Regulations have brought further clarity to the scope of total 'cost' by excluding financing overheads and depreciation.

While the previous regulations allowed the CCI to consider cost concepts such as 'avoidable cost', 'market value', and 'long run average incremental cost' **(LRAIC)**, under the current Regulations, the CCI may consider 'average total cost' (i.e., total cost divided by total output), 'average avoidable cost' (i.e., total avoidable cost divided by total output), or LRAIC. Under the previous regulations, LRAIC was determined based on the increment to the 'long run average cost' and the current Regulations have revised the scope of LRAIC to include the average of variable and fixed costs (including sunk costs and product-specific fixed costs). The amended scope of LRAIC also provides clarity for multi-product entities where a proportionate share of common costs would have to be accounted for.

In its general statement accompanying the new Regulations, the CCI has clarified that the Regulations are sector-agnostic and would be adaptable across industries, including the digital sector.

Assistance from experts for determining 'cost'

Under the Regulations, the CCI or the DG may obtain assistance from experts for determining 'cost' figures. Additionally, a party also has the option of submitting a request to the CCI for appointment of an expert, where such a party disputes the 'cost' determination by the CCI.

*The Regulations can be accessed **here.***

#2

CCI publishes revised FAQs on merger control.

On May 20, 2025, the CCI released a set of Frequently Asked Questions **(FAQs)**, to aid parties in understanding and navigating the implementation of recent changes to the Indian merger control regime. These changes stem from the amendments to the Competition Act, the CCI (Combination) Regulations, 2024 (**Combination Regulations**), and the Competition (Criteria for Exemption of Combination) Rules, 2024. Key revisions to the FAQs are:

1. Computation of Deal Value Threshold (**DVT**)

The FAQs provide guidance on computation of DVT. They clarify the scope of substantial business operations in India **(SBO)**, digital services, and inclusions and exclusions from deal value in cases of share swaps, call payments, call/ put options, and future outcomes.

2. Control

The FAQs clarify that, in assessing the existence of control, the CCI examines both: (i) the extent of shareholding, and (ii) the nature of rights held. They also distinguish between rights that raise a presumption of control and those that do not:

a) *Rights that raise presumption of control:* Rights that relate to operational aspects of an enterprise and are commercially strategic in nature. These could be rights relating to budget or business plans approval, amendment of charter documents, appointment or removal of senior management personnel, operational parameters, etc.

b) *Rights that do not raise presumption of control:* Rights such as information rights, tag-along rights, exit rights, anti-dilution rights, rights restricting transfer of shares to particular identified persons or enterprises, and right to appoint an observer would not raise presumption of control.

3. Group

The FAQs clarify that for the 'group' asset/ turnover test, all such entities that are under 'material influence' of the acquirer/ target would be covered under the 'group' even if the shareholding threshold for such an entity (i.e., 26 percent) is not met or is not included in the consolidated financial statements.

4. Ultimate Controlling Person (**UCP**)

The FAQs confirm that an entity can have multiple UCPs, requiring a thorough assessment of all controlling entities to identify potential overlaps. While mapping business overlaps, the activities of the acquirer would include those of its UCPs, their controlled entities, and affiliates. In the case of the target, the assessment would cover the activities of the target company itself, along with those of its downstream controlled entities and affiliates.

5. Inter-connected Transactions

The FAQs provide clarity as to what will be considered as inter-connected transactions. While it would largely depend on facts of the case, the litmus test would be 'meeting of minds' of the parties to invest as a single entity in the same business.

6. Commercially Sensitive Information (**CSI**)

The FAQs provide a non-exhaustive, indicative list to clarify what would constitute CSI in context of merger control regime. CSI would include information regarding pricing, operations, customers, research and development **(R&D)**, marketing and any strategic information. Information that is available in public or anonymized or pertains to financial statements (audited/ unaudited), ownership structure will not be considered as CSI.

*The revised FAQs can be accessed **here.***

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