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# Market Matters

## The Antitrust Brief

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# CCI diverges from DG's conclusions: closes case against GMR Hyderabad Airport

On September 15, 2025, the Competition Commission of India (CCI), passed an order closing the matter against GMR Hyderabad International Airport Limited (GHIAL) and its subsidiary GMR Aero Technic Limited (GATL). The dispute arose from GHIAL's refusal to renew Air Works India (Engineering) Private Limited's (Air Works) licence to provide Line Maintenance Services (LMS) at the Rajiv Gandhi International Airport (RGIA), which Air Works alleged amounted to an abuse of dominance.

Parallely, Air Works also approached the High Court (HC) of Telangana<sup>1</sup> challenging GHIAL's refusal to renew Air Works' license as arbitrary and unconstitutional. However, the HC refused interim relief citing the licensor-licensee relationship and arbitration clause, and subsequently the appeal was also dismissed.

**CCI's prima facie order and Telangana HC's intervention.** On October 3, 2019, the CCI prima facie found GHIAL to be dominant in the upstream market for provision of access to airport facilities/ premises at RGIA and directed a Director General's (DG) investigation. This order was challenged before the HC of Telangana twice<sup>2</sup>, whereby the HC dismissed the challenge in one, while the other petition was withdrawn by GHIAL.

## Findings of DG investigation

1

**Unfair conditions/ restriction of services.** GHIAL's refusal to renew Air Works' licence sought to eliminate a competitor and favour GATL, restricting Air Works' services and potentially raising costs for airlines and end consumers.

2

**Denial of market access:** Non-renewal of space and access prevented Air Works' LMS operations. GHIAL's justifications were rejected, and the denial was held to be unjustified.

3

**GHIAL leveraging its position in the LMS market.** GHIAL used its control over airport access to benefit GATL, as its email communications on non-renewal led airlines to shift to GATL, despite claims of neutrality.

**CCI's observations.** The CCI, after examining the DG's report, parties' submissions, and the material on record, disagreed with the DG's conclusions. It held that GHIAL's conduct did not amount to an abuse of dominance:

**No restriction/ limitation on the provision of LMS.** Although Air Works' licence was not renewed, it continued providing LMS at RGIA via mobile facilities, and many airlines undertook self-handling or acted as third-party providers, and therefore, the non-renewal neither restricted competition nor harmed consumers.

**Air Works was not denied market access.** GHIAL's discretion to allocate space, coupled with Air Works continuing operations without dedicated premises and other LMS providers functioning similarly, meant the non-renewal aligned with expansion needs did not constitute denial of market access.

**GHIAL did not leverage its position to benefit GATL.** No leveraging was established as the emails to airlines were neutral, shifts of airlines and employees were through choice or tenders, and no undue advantage to GATL was proved.

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

<sup>1</sup> WP (C) No.13298/2019.

<sup>2</sup> WP (C) No. 22467/2019, WP(C) No. 7227/2024.

**Beyond the brief:** Under the Competition Act, 2002 (**Competition Act**) if there is no finding of a contravention under a DG report, the CCI may agree with the DG's findings and close the matter. Similarly, if a DG report finds a contravention, the CCI may agree with the DG's findings and impose a penalty and/or direct remedies. However, the procedure to be followed by the CCI was unclear in two possible scenarios: (i) if the CCI directs a further investigation or undertakes a further inquiry, after considering parties' objections to a no contravention DG report; and (ii) if the CCI undertakes a further inquiry in case of a DG report that finds a contravention. To address the ambiguity in procedure, the Competition Act was amended to include sub-section (9) under Section 26, which clarifies that the CCI could now pass an order closing the matter or imposing penalties and/or directing remedies.

Notably, before the CCI can pass an order under Section 26(9), either closing the matter or imposing a penalty and/or directing remedies, it is required to issue a 'show cause' notice and provide parties with a reasonable opportunity of hearing. Section 53A of the Competition Act has also been amended to allow appeals against orders passed under Section 26(9).

The CCI's order dismissing allegations against GHIAL, is likely to fall under Section 26(9) since the DG report in this case found a contravention, the CCI undertook its inquiry and after providing an opportunity of hearing to the parties, closed the matter finding no contravention. Recently, the CCI has passed two similar closure orders, which also may be considered as orders passed under Section 26(9)<sup>3</sup>.

## NCLAT upholds CCI's closure of allegations against the Directorate General of Foreign Trade and IREL

On September 23, 2025, the National Company Law Appellate Tribunal (**NCLAT**) dismissed an appeal filed by the Beach Mineral Producers Association (**BMPA**) and Phoenix Agency (through its proprietor) (**Phoenix**) (together, the '**Appellants**') against the CCI's closure order, dismissing allegations against a notification of the Directorate General of Foreign Trade (**DGFT**) and its implementation by Indian Rare Earths Limited (**IREL**).

**Allegations before the CCI.** The Appellants had alleged that a notification issued by the DGFT mandating canalizing the export of beach sand minerals (**BSMs**) through only a state trading enterprise (**STE**) - in this case IREL - along with the standard operating procedure (**SOP**) issued by the DGFT had resulted in IREL being dominant. The DGFT's notification and the SOP were also alleged as leading to an abuse of dominance by IREL on grounds of certain unfair and discriminatory practices.

**CCI's findings.** Through its order dated 25 July, 2019, the CCI, dismissing the Appellants' allegations, observed that STEs deal with the import/ export of products pursuant to a government policy pertaining to strategic industries. It further noted that BSMs have space, defence, and atomic applications and have been statutorily classified as "atomic minerals". The CCI observed that the allegations extend to policy formulation by the DGFT regarding the export of BSMs and the implementation of such policy by IREL. The CCI concluded that changes in export policy by DGFT pursuant to its statutory duties and its implementation by IREL was not amenable to scrutiny under the Competition Act.

### NCLAT's Findings

- **DGFT's notification did not bar exports:** The NCLAT observed that the DGFT's notification, through which exports of BSMs were canalized through STE, did not preclude Appellants from dealing with foreign buyers, as it only requires that exports must be canalized through IREL.
- **Atomic energy functions fall outside the scope of 'enterprise':** Abuse of dominance can only be examined vis-à-vis an 'enterprise' and government activities pertaining to 'atomic energy' fall outside this scope. The NCLAT also noted that remedies available under the Competition Act are not appropriate vis-à-vis an issue of policy (such as the DGFT notification).
- **Government policy cannot be challenged under the competition law framework:** The NCLAT also noted that it was not an appropriate forum for seeking quashing of a policy decision of the government.

The order of the NCLAT can be accessed [here](#) with case details Competition Appeal (AT) No.48 of 2019.

<sup>3</sup> Kalpit Sultania vs. Indian Rare Earths Ltd., Case No. 22 of 2021; Beach Mineral Producers Association vs. Indian Rare Earths Ltd., Case No. 26 of 2022.

**Beyond the brief:** The NCLAT's judgment has reaffirmed the CCI's approach of refusing to interfere with policy functions of governmental agencies, particularly in areas of strategic significance, such as atomic minerals. Through its prior decisional practice, the CCI has clearly refrained from scrutinizing any anti-competitive effects of a government policy. A governmental agency or department that is exercising sovereign or policy functions under a statutory or regulatory framework, has previously been considered by the CCI to fall outside the scope of an 'enterprise' and therefore, outside the purview of the Competition Act. The CCI's decisional practice has drawn a clear line between policy formulation and policy implementation, with the CCI being more amenable to scrutinize the latter, only if implementation has been improper leading to anti-competitive practices or conduct.

## NCLAT upholds the CCI's finding of bid rigging in tenders floated in Uttar Pradesh; reduces penalty imposed on 'cover' bidders

On September 16, 2025, the NCLAT upheld the CCI's final order dated April 4, 2022, through which the CCI had found certain entities, including M/s Satish Kumar Agarwal and M/s Siddhi Vinayak & Sons (together, the '**Appellants**') to have engaged in bid-rigging.

In its final order, the CCI found nine entities (including the Appellants) to have engaged in bid-rigging/ bid-manipulation in respect of tenders floated by the Department of Agriculture, State of Uttar Pradesh. The CCI also found that certain opposite parties and their individuals had submitted fake invoices and false certificates, to ensure the eligibility of certain bidders so these could act as 'cover' bidders for the winning bidders. The CCI considered evidence including fabricated documents prepared by a competitor for the Appellants, frequent telephonic conversations prior to bid submissions, lack of operations in soil testing for some entities, and submission of bids through a common IP address. The CCI directed the opposite parties and their individuals to 'cease and desist' from the conduct and imposed penalties at 5% of the average turnover of the entities.

### NCLAT's key findings

#### ■ Submission of 'cover' bids

- From the statements furnished to the DG and evidence on record including invoices, experience certificates etc., the nexus between the Appellants and a competitor, M/s Yash Solutions was established and that the Appellants submitted 'cover' bids for the successful bidder, M/s Yash Solutions.
- The NCLAT also noted that evidently, Mr. Satish Agarwal (proprietor of M/s Satish Kumar Agarwal) was in-charge of the business of M/s Siddhi Vinayak & Sons and bids were submitted on behalf of the latter only to create the appearance of competition in the market.
- The purpose of such 'cover' bids was to ensure that tenders were not cancelled due to lack of bids.

#### ■ Penalty

- The NCLAT noted that in cases where entities are first time bidders, 'relevant turnover' would not be an appropriate basis since that would result in a 'NIL' penalty and parties would evade a penalty despite a clear case of cartel conduct. The CCI's consideration of total turnover for penalty computation was upheld by the NCLAT. However, because the Appellants had a supporting role and were not the winning bidders, the penalty amount was reduced from 5% of the total turnover to 3% of the total turnover for the relevant years.

The order of the NCLAT can be accessed [here](#) with case details Competition Appeal (AT) No. 05 of 2022.

Other entities that were penalized by the CCI had also appealed before the NCLAT. The NCLAT, in those previous appeal orders, upheld the bid rigging findings and reduced the penalties to 3% for entities that submitted 'cover' bids, except for one 'cover bidder' which "played a crucial role". However, for two of the 'ringleaders' who won the tenders penalties were not reduced.

# Bombay HC dismisses Asian Paints' challenge to the CCI probe

On September 11, 2025 the Bombay HC dismissed an appeal filed by Asian Paints Limited (**Asian Paints**), challenging the CCI's order of July 1, 2025, ordering an investigation into the alleged abuse of dominance by Asian Paints in the decorative paints market. Asian Paints challenged the CCI's order on grounds including: (i) no oral hearing was provided to Asian Paints prior to issuing order under Section 26(1) of the Competition Act; (ii) the matter involved allegations substantially similar to a previous investigation where the CCI had closed the matter; and (iii) the CCI could not have replaced its order after having issued and published it on its website.

## Bombay HC's findings

1

- **No right to hearing at the *prima facie* stage:** The court reiterated that the order under Section 26(1) of the Competition Act is administrative in nature and not judicial. Therefore, an opposite party has no right to a hearing at this stage.

2

- **Section 26(2A) is discretionary and creates no jurisdictional limitation on the CCI:** The CCI can rightfully look into similar complaints, if there are new facts brought before it. Section 26(2A) is only an enabling provision, operating in cases where the "CCI intends to close the case". Section 26(2A) expressly clarifies what is already implicit in Section 26(2).

3

- **The first order was a draft inadvertently uploaded on the CCI's website:** The court was satisfied with the CCI's explanation that the first order was not signed by members of the CCI and was uploaded inadvertently. Moreover, Asian Paints did not dispute that they received only the second order under a cover letter from the CCI.

A detailed summary of the CCI's *prima facie* order can be accessed [here](#).

The Bombay HC's order can be accessed [here](#).

**Beyond the brief:** Section 26(2A), added to the Competition Act in 2023, is an enabling provision to allow the CCI to dismiss complaints that are based on substantially similar facts or issues as previously decided. This insertion was recommended by the CLRC report in 2019. The CLRC report noted that such an express provision was necessary to ensure expediency, and to avoid the repetition of inquiry and investigation efforts by the CCI and the DG.

Since coming into force, Section 26(2A) has only been utilized once - when in August 2025, the CCI dismissed a complaint against Google pertaining to its search ad policies, as the same had already been addressed in two previous cases.<sup>4</sup>

<sup>4</sup> *Matrimony and Anr. v. Google and Ors.*, Case Nos. 07 and 30 of 2012; and *Shri Vishal Gupta and Anr. v. Google and Ors.*, Case Nos. 06 & 46 of 2014.

# The Supreme Court upholds Delhi HC's decision setting aside the CCI's inquiry against Ericsson

On September 2, 2025, the Supreme Court of India (**Supreme Court**) disposed of the appeals filed by the CCI against a judgment dated July 13, 2023 of the Delhi HC which upheld the application of the Patents Act, 1970 (**Patents Act**) over the Competition Act.

In 2013, the CCI directed an investigation against Ericsson's Standard Essential Patent (**SEP**) licensing practices, based on information filed by three Indian communication device manufacturing companies, Micromax Informatics Limited, Intex, and Best IT World (**iBall**). In 2014, Ericsson challenged the CCI's jurisdiction before the Delhi HC and the challenge was dismissed by a single judge of the Delhi HC, noting that remedies were available under both the Competition Act and the Patents Act. In July 2023, the Division Bench of the Delhi HC held that the CCI lacked jurisdiction in matters pertaining to exercise of patent rights. The Division Bench's judgment also took note of the settlements entered into between the parties and there being no basis for proceedings to continue before the CCI.

The CCI challenged the judgment of the Division Bench of the Delhi HC before the Supreme Court. In refraining from interfering with the Delhi HC's judgment, the Supreme Court noted that once there is a settlement between the parties, there is no further basis for the CCI's inquiry to continue, effectively setting aside the CCI's inquiry into allegations of abuse of dominance against Ericsson. However, the Supreme Court has left open the question of law pertaining to the CCI's jurisdiction in matters involving exercise of patent rights and the final outcome of such a challenge would depend on the factual context of such matters.

*The Supreme Court's order can be accessed [here](#).*



# The Supreme Court overturns COMPAT decision, upholds CCI's penalty and remedies for Kerala Film Exhibitors Federation's office-bearers

On September 26, 2025, the Supreme Court allowed an appeal by the CCI, setting aside a decision of the erstwhile Competition Appellate Tribunal (**COMPAT**) which had, in turn, set aside the penalties imposed by the CCI on certain office-bearers of the Kerala Film Exhibitors Federation (**KFEF**) and their debarment from KFEF. The CCI filed an appeal before the Supreme Court, challenging the COMPAT judgment. The Supreme Court, in allowing the CCI's appeal, has completely restored the CCI's final order, including the monetary penalties imposed on the office-bearers and their debarment from KFEF.

**CCI's key findings.** On September 8, 2015, the CCI had found KFEF to have violated the prohibition on anti-competitive horizontal agreements. KFEF had threatened to boycott distributors if they chose to exhibit their films with the Crown Theatre. The CCI imposed a penalty of 10% of KFEF's average turnover for the relevant years. In addition, Mr. M. C. Bobby and Mr. Basheer Ahmed, office bearers of KFEF (together the '**KFEF Office Bearers**'), were also deemed guilty of the contravention for being in-charge of the affairs of KFEF and responsible for the conduct of KFEF. The CCI imposed penalties of 10% of their average income for the relevant years and directed a behavioural remedy, debarring them from participating in the affairs of KFEF for two years.

**COMPAT's key findings.** On April 18, 2016, the erstwhile COMPAT upheld the CCI's order pertaining to the contravention by KFEF, but had set aside the penalties imposed on the KFEF Office Bearers for violation of principles of natural justice. The COMPAT reasoned that (i) the DG, in its investigation report, had recorded findings on the role of the KFEF Office Bearers without first issuing a notice to them indicating the DG's intentions to make adverse observations regarding their conduct; and (ii) the CCI had also not issued any notice to the KFEF Office Bearers stating that it proposed to impose penalties and a behavioral remedy for debarment.

## Supreme Court's key findings

- The CCI forwarding the DG report is sufficient notice.** The Supreme Court held that the CCI's order forwarding the DG report to the parties clearly indicated the alleged contraventions and identified the individuals in-charge of KFEF's affairs. This, according to the Supreme Court, provided an opportunity to the KFEF Office Bearers to file a reply/ objection to the DG report. The Supreme Court held that under the framework of the Competition Act, the CCI's order forwarding the DG report and the hearing on the DG report is 'sufficient notice' before the CCI could find a contravention and impose a penalty. The Supreme Court, in recording its observation, has considered the Competition Act and the General Regulations as they stood prior to the recent amendments.
- Individuals can be directed to comply with behavioral remedies.** The Supreme Court noted that although typically, behavioural or structural remedies are directed towards enterprises, if a behavioural remedy touches upon corporate governance, similar directions can be passed with respect to individuals as well.
- CCI's penalty and remedies were 'proportionate'.** The Supreme Court held that the debarment of KFEF Office Bearers from KFEF's affairs for two years was a proportionate behavioral remedy, primarily considering the sufficiency of evidence against the KFEF Office Bearers and the continuation of anti-competitive conduct despite previously imposed monetary penalties in a different case<sup>5</sup>.

The Supreme Court's order can be accessed [here](#).

<sup>5</sup> Kerala Cine Exhibitors Association v. Kerala Film Exhibitors Federation and Ors., Case No. 45 of 2012.

# IN THE NEWS

## NCLAT hears final arguments in the Meta & WhatsApp privacy policy appeal, reserves judgment

➔ On September 25, 2025, final arguments were concluded before the NCLAT and the judgment was reserved. The appeal pertains to the CCI order passed in November 2024 which had, amongst other, found the 2021 privacy policy update introduced by WhatsApp violative of Section 4 of the Competition Act, imposing various remedies and a penalty of INR 2,131 million (~ USD 25.4 million) on Meta.

### Key arguments made by Meta and WhatsApp

- **The 2021 update did not expand data collection:** The 2021 policy only clarified the scope of 2016 policy. In a previous case, CCI had found no fault with the 2016 policy.
- **No actual conduct:** The CCI's order was based on likely conduct that has not yet occurred.
- **Jurisdictional overreach:** Issues like consent, data minimisation, and user expectations are the exclusive turf of privacy laws.
- **The CCI failed to prove abuse of dominance:** It incorrectly defined the market, alleged abuse in a market where Meta was not dominant (online ads), and failed to show any harm to competition.

### Key arguments by CCI

- **CCI's jurisdiction on data & competition:** The scope of inquiry under competition law is distinct from privacy laws, with powers to address market harms.
- **Market Definition:** CCI defined the market as OTT instant messaging apps in India, rejecting Meta's broader "user attention" or "consumer communication services" as abstract and non-substitutable with messaging apps.
- **2021 Policy Concerns:** The policy's removal of opt-outs, expanded data collection raised entry barriers for rivals, and reduced competition, justifying CCI's investigation.
- **Abuse of dominance:** Meta abused its dominant position by imposing privacy policy on 'take-it-or-leave-it' basis, leaving users with no real choice.

ELP's detailed alert on the CCI order is available [here](#).



# IN THE NEWS

## The Supreme Court hears final arguments in Amazon's appeal to the NCLAT judgment upholding CCI's penalty

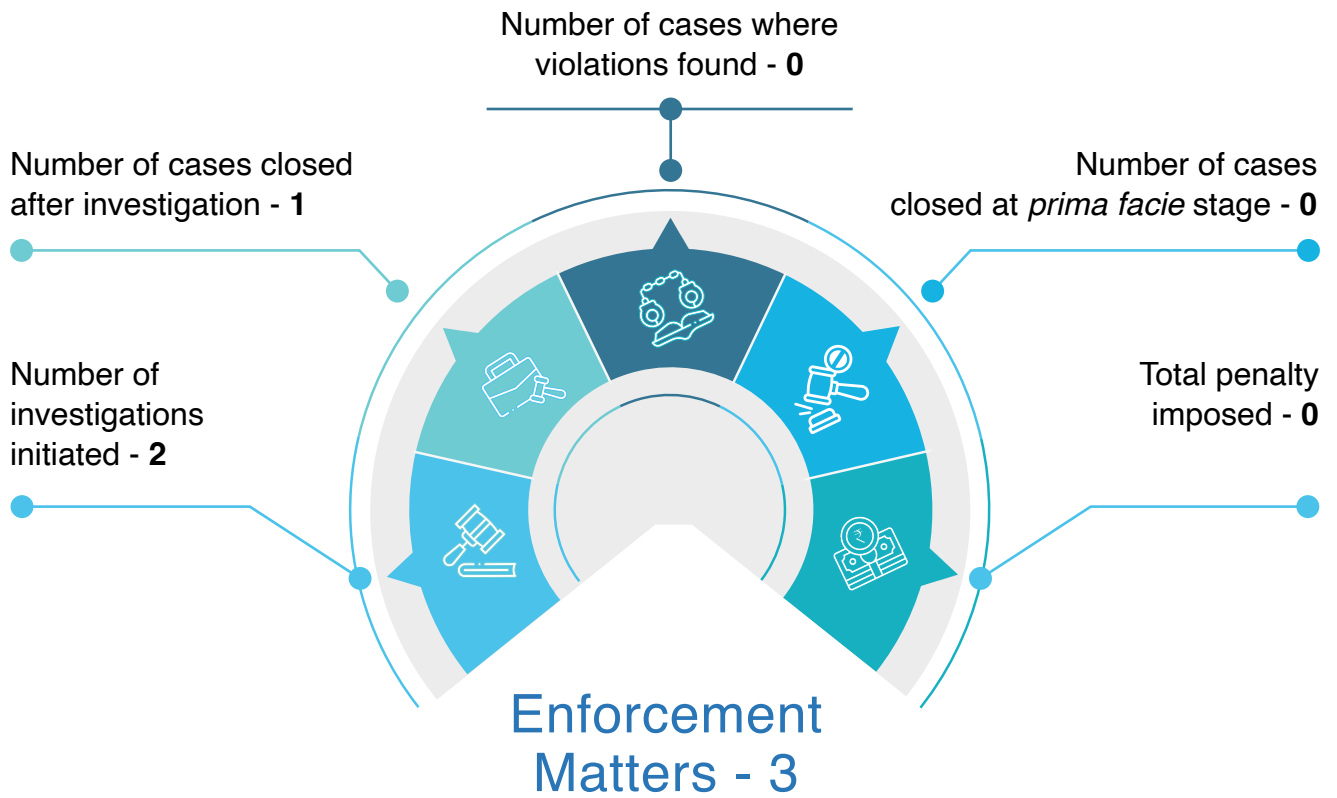
On September 26, 2025, final arguments were concluded before the Supreme Court and the judgment was reserved. The appeal pertains to the NCLAT's judgment upholding a penalty of INR 2,020 million (~ USD 22.8 million) for Amazon's failure to notify all material facts concerning its investment in Future Retail Limited (**FRL**).

### Key arguments by Amazon

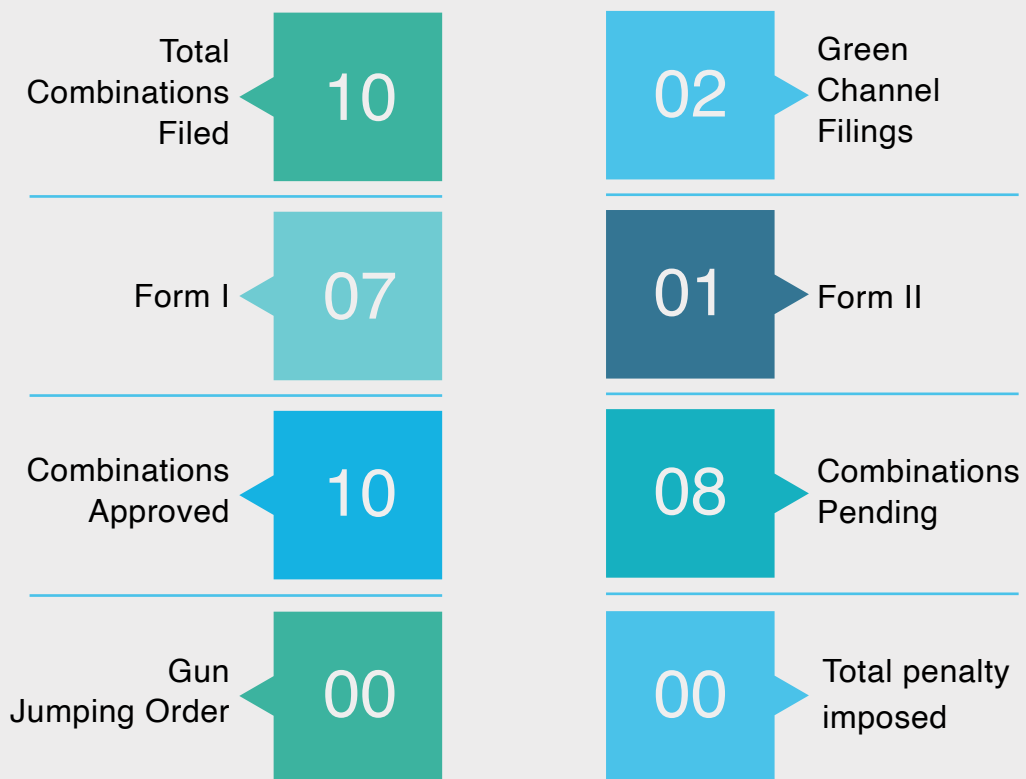
- Assessment included retail business:** The CCI assessed the then proposed combination in whole, including the retail market, not just the payments sector.
- There was no concealment:** The investment's purpose was to secure a future position in the retail segment contingent on possible changes in Foreign Direct Investment law. Amazon explicitly committed to seeking fresh CCI approval before any future acquisition of shares in FRL.

### Key arguments by CCI

- Disclosure not substitutable for notification:** It was argued that while Amazon disclosed certain aspects of the retail business, it failed to notify the transactions as being "interconnected," and therefore cannot escape liability.
- Concealment of real strategic intent:** Amazon's own internal documents, along with its submissions before other legal fora (including arbitration proceedings), revealed a clear strategic intent to solidify its retail presence. This evidence contradicted Amazon's filings with the CCI, proving the concealment was willful.



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