

Implementation of Merger Remedies Under Indian Competition Law – Legal History of The Last Decade

The CCI has affirmed all the combinations without any remedies/modifications and in twenty-two (22) cases as it were, the CCI has endorsed the combinations with remedies/modifications within the prima facie arrange (Stage I) or, after making a point by point examination (Stage II)^[1]. The CCI has been accepting the remedies proposed by the parties advertising intentional divestments/commitments during the Stage I survey and has conducted an in-depth Stage II examination including open discussion in more than half of the cases. Amid the Stage I request, where the CCI opines that the competition concerns may be unravelled with the basic divestments and/or Behavioural cures based on maintaining a strategic distance from spill over impacts, stage separation, get to showcase and Formwork, data trade, strife of intrigued and shopper assurance.



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INTRODUCTION

The Competition Commission of India (hereinafter alluded to as the “CCI”) has affirmed more than 900 combinations, since its beginning in differing segments of the economy, included but not limited to money related markets, pharmaceuticals, healthcare, retail, advanced markets etc. and has not up to this point disavowed any combination, but the later

Amazon/Future Coupon arrangement of the CCI putting the combination in suppression and required the parties to refile the take note in Form II, maintained by the National Company Law Appellate Tribunal (NCLAT).

Whereas concluding the finality of any proposed combination, the CCI gets to the ex-ante impacts of any proposed combination based on showcased forecasts, information accessible on record, the conclusion of the CCI was thereof based on the components provided under Section 20(4) of the Act¹, instead of the genuine results of any combination within the market. In PVR/DLF combination order², the CCI stated that “the idea behind the ex-ante review of combinations is to restrain those combinations, which, if allowed to go forward, would be likely to adversely affect competition (AAEC) in the relevant market. Combinations by their very nature can eliminate any competition that exists between the parties and reduce the number of firms competing in the relevant market. Where this reduction is likely to cause adverse effects on Competition (AAEC), the market will be less oriented to consumer and efficiency goals such as lower prices, better quality, more consumer choice, and innovation (even in the absence of any violations

¹. Section 20 (4) of the Competition Act, 2002 - For the purposes of determining whether a combination would have the effect of or is likely to have an appreciable adverse effect on competition in the relevant market, the Commission shall have due regard to all or any of the following factors, namely:— (a) actual and potential level of competition through imports in the market; (b) extent of barriers to entry into the market; (c) level of combination in the market; (d) degree of countervailing power in the market; (e) likelihood that the combination would result in the parties to the combination being able to significantly and sustainably increase prices or profit margins; (f) extent of effective competition likely to sustain in a market; (g) extent to which substitutes are available or are likely to be available in the market; (h) market share, in the relevant market, of the persons or enterprise in a combination, individually and as a combination; (i) likelihood that the combination would result in the removal of a vigorous and effective competitor or competitors in the market; (j) nature and extent of vertical integration in the market; (k) possibility of a failing business; (l) nature and extent of innovation; (m) relative advantage, by way of the contribution to the economic development, by any combination having or likely to have appreciable adverse effect on competition; (n) whether the benefits of the combination outweigh the adverse impact of the combination, if any.

². Combination No. C/2015/07/288, Order dated 04 May 2016.

of competition law). In short, the ex-ante review aims to avert structural changes that would damage the incentives to compete.”

The CCI has affirmed all the combinations without any remedies/modifications and in twenty-two (22) cases as it were, the CCI has endorsed the combinations with remedies/modifications within the prima facie arrange (Stage I) or, after making a point by point examination (Stage II)³. The CCI has been accepting the remedies proposed by the parties advertising intentional divestments/commitments during the Stage I survey and has conducted an in-depth Stage II examination including open discussion in more than half of the cases. Amid the Stage I request, where the CCI opines that the competition concerns may be unravelled with the basic divestments and/or Behavioural cures based on maintaining a strategic distance from spill over impacts, stage separation, get to showcase and Formwork, data trade, strife of intrigued and shopper assurance.

In forty-six (46) combination cases, the CCI has penalized the merging parties for disappointment in recording the notice (gun-jumping, Section 43A of the Act⁴), with three (3) cases where the CCI has fined (from Rs. 50 lacks – Rs. 1 crore) for recording deluding data or exclusion in recording correct/true data within the notice (under Section 44 and 45 of the Competition Act, 2002). In cases of recording misleading/omission in recording correct and true information within the notice under Section 44 and 45 of the Competition Act, the CCI has put the particular combination in suspension/abeyance and requested the individual parties to refile the notice under Form II (long-form) for the reassessment of the CCI. In the arrangement against Amazon/Future Coupons (FCPL)⁵, the CCI forced a penalty of INR 202 Crore for Amazon's failure to reveal inter-connected exchanges to its proposed combination with FCPL.

The CCI jotted down different concerns relating to deluding filings (data at Singapore Universal Discretion Centre (SIAC) being distinctive from data recorded at the CCI) and non-disclosure of subtle elements of the shareholder's agreement requiring Amazon's earlier composed assent for FCPL to choose any matter relating to its relate company (Future Retail Constrained (FRL)). Such understanding, as portion of Amazon's securing of FCPL, has been considered inter-connected exchanges by CCI, and Amazon's disappointment to inform such understanding driven to the imposition of a heavy punishment on Amazon and required it to refile the notice with CCI in Form II (Long Form)⁶. The deal was

put in suspension for which Amazon has challenged the CCI order in NCLAT. Recently, the NCLAT has taken note of the discoveries of the CCI and has not obstructed with the arrangement of the CCI⁷.

The CCI has affirmed various proposed combinations which are more than fifty (50) combinations under the green channel course. This Green channel course is once more a self-assessment and trust-based course where the parties are at risk to ascertain the impacts of the combination on the Indian showcase. With the addition of the Green Channel endorsement course in 2019 as a course for regarded endorsement for any proposed combination, right now, each fifth exchange is recorded under the green channel course. The CCI has continuously required the consolidating parties to fill form/s only when fully reasonable, and genuine divulgences of all interconnected exchanges embraced in any combination. The parties must deliver data relating to all person except when they may be excluded under different exclusions given under the Competition Act⁸. A case of inter-connected transactions, exchanges can be related to procurement made by any auxiliaries of the combining parties or any understanding between undertakings for future acquisitions. In combination arrangement of *Betaine B.V/ Hinduja Worldwide Arrangements Limited*⁹, the CCI has watched that “as competition assessment of a combination is an ex-ante, forward-looking exercise, any other combination envisaged by the parties, whether inter-connected to the proposed combination or not, which is likely to change the market position of the parties going forward, also has to be notified to CCI. Thus, if parties envisage another merger and acquisition, unless it is too speculative, whether or not inter-connected to the proposed combination, which is likely to change the market position of the parties going forward, competition assessment must cover the impact of that merger and acquisition”.

The CCI has been looking into the total chain of possession, control and the concerned exercises of the parent company (particularly of the acquirer conjointly the acquired/target undertaking) of the parties to the combination. The ownership/control/activities of parent companies if working within the same or related pertinent markets ought to be reasonably uncovered and has been a major calculate considered within the competition evaluation. In terms of control, the CCI has been famous that in case an undertaking obtains fabric influence (which is the beginning limit of control) over another substance, the full of the financials of the target undertaking would be taken into consideration for Section 5 of the Act. It was famous that as long as control over the operations of a finance is procured in a support

³. Available at <https://globalcompetitionreview.com/guide/the-guide-merger-remedies/fourthedition/article/india>

⁴. Section 43A of the Competition Act, 2002 — If any person or enterprise fails to give notice to the CCI under Section 6 (2), the CCI shall impose on such person or enterprise a penalty which may extend to one percent (1%) of the total turnover or the assets, whichever is higher, of such a combination.

⁵. Proceedings against Amazon.com NV Investment Holdings LLC under Sections 43A, 44 and 45 of the Competition Act, 2002. Order dated 17 December 2021, available at https://www.cci.gov.in/sites/default/files/Notice_order_document/Order-688.pdf.

⁶. *Supra* at 5.

⁷. *Amazon vs CCI & Ors, Competition Appeal (AT) No. 01 of 2022, along with No. 02 of 2022 and No. 03 of 2022, NCLAT, Principal Bench.*

⁸. Regulations 9(4) and 9(5) and Schedule I of the Competition Commission of India (Procedure in regard to the transaction of business relating to combinations) Regulations, 2011.

⁹. Combination Registration No. C-2021/09/870. Proposed Combination related to Betaine BV's India Business Transfer Agreement and execution of the Master Framework Agreement with Hinduja Global Solutions Limited.

administration course of action, where the extreme recipients have given specialist to the venture director to appreciate control over the administration of the support, the resources and turnover of the total financials of the target venture would be inferable and not as it were to the degree of shareholding and control over the given target entity¹⁰. In penalty order of Investcorp India Resource Directors Pvt. Ltd. under Section 43A of the Competition Act, 2002¹¹, the CCI has noted that the securing of control is one of the shapes of combination under Section 5 of the Act and a notice under Section 6(2) of the Act is required to be given to the CCI, indeed in cases when after the securing the useful intrigued is vested in people other than the acquirer.

The products/services given by the parties are classified within the limit and wide pertinent showcase. The CCI moreover inclines toward depiction of the Narrowest Relevant Segment - 1 and 2. The evaluation of vertical and complementary connections amplifies to coordinate and backhanded connections and the common- sense competitive effect of the combination within the showcase. The CCI has endorsed numerous combinations of cures to moderate the potential competition issues emerging from non-compete commitments concurred between the parties. In any case, as of late, the CCI has chosen to remain absent from investigating and passing a conclusion on, non-compete clauses as portion of its merger control survey where parties are not required to lock in in a nitty gritty defence of these contracts. By and large, the CCI has been focusing on making a culture of intentional compliance in India and empowering parties to reveal all significant data relating to the combination.

TRENDS IN APPROVING REMEDIES

Upon accepting the combination notice in either Form I/II, the CCI gets to any proposed combination Under Section 31 of the Competition Act, 2002 that comprises of two (2) stages of request - Stage I and Stage II request. After exploring the proposed combination within the Stage I organize, when the CCI makes a prima facie conclusion that such proposed combination may genuinely hurt the competition (AAEC) in Indian markets, it may favour the combination with remedies/modifications or continue with its request in Stage II arrangement. Stage II request are favoured when there exist genuine competition and showcase twisting concerns as the impacts of the proposed combination after the combination are culminated and operational. Such cures/ adjustments to the combinations point at protecting and re-establishing the state of competition because it existed recently. After completing the Stage II request, the CCI favours the combination with cures/ alterations to put commitments on the consolidating parties to deconcentrate the common markets. The CCI may acknowledge remedies/modifications to any proposed combination in Form of Basic and/or Behavioural cures.

Basic cures are certain divestiture of commerce/ commitment to offer an auxiliary etc., Behavioural cures on the other hand may be in Form of giving get to Formwork, innovation, or mental property rights (IPR) or end of select supply or dissemination understandings etc.¹². Amid the introductory requirement a long time, the CCI has focused receiving the auxiliary cures (divestments of trade and exchange of licenses etc.) more than Behavioural cures. Worldwide best practices recommend that within the nonattendance of an appropriate basic remedy, as when divestiture isn't conceivable, Behavioural cures may be an elective. The reason of cures is to protect to the degree conceivable the pre-combination level of competition by reproducing as far as conceivable the competitive status quo within the influenced markets. Within the PVR-DLF¹³ combination arrangement, the CCI stated that "Structural remedies, as they straightforwardly address the cause of competitive hurt emerging from the end of a overwhelming competitor and have a tough affect by way of making an compelling competitor to the combined substance, are favoured to behavioural cures for flat combinations on the EU and US¹⁴". It was famous that basic cure (divestiture) would not require progressing oversight, which isn't within the case of Behavioural cures. Assist, it was famous that "Behavioural remedies (such as price caps and quality commitments) would be akin to an undertaking by the Acquirer not to abuse the dominant position being created in the relevant market as a result of the Proposed Combination, with the requirement that the CCI monitor the same on an ongoing basis and not adequately replicate the outcomes of a competitive market. It was noted that "the behavioural commitments would not effectively alleviate the competition concerns in the relevant market, apart from the fact that behavioural remedies would be difficult to formulate, implement, monitor and also pose a risk of creating market distortions".

However, with developing jurisprudence, the CCI has moved towards endorsing the proposed combinations with half breed cures – a blend of Auxiliary and Behavioural cures. Indeed, numerous times, the CCI has received Behavioural cures over basic cures in favouring any proposed combination. The CCI too has been receiving half breed cures where basic cures coupled with auxiliary behavioural cures have been favoured by the CCI. By and large, the CCI has cleared most of the cases in Stage I inquiry within a normal time of 4-8 weeks. As it were a modest bunch of cases, a add up to of twenty-two (22) in number have gone to Stage II request and have been cleared with modifications/remedies and has taken 1-2 a long time to reach conclusions, with encourage 1-2 a long time to actualize the remedies¹⁵.

¹⁰. Investcorp India Asset Managers Private Limited order under Section 43A of the Competition Act, 2002. Order dated 17.12.2021.

¹¹. Supra at 8.

¹². Available at <http://competitionlawblog.kluwercompetitionlaw.com/2019/04/01/merger-remedies-in-india-having-an-upper-hand/>

¹³. Supra at 3

¹⁴. EC Notice on remedies under Council Regulation (EC) No 139/2004 and under Commission Regulation (EC) No 802/2004; Statement of the Bureau of Competition of the Federal Trade Commission (2012); Antitrust Division Policy Guide to Merger Remedies (2011) and ICN, Merger Remedies Review Project (2005).

¹⁵. Supra at 4

Table: List of 22 (twenty-two) combinations approved with modifications/remedies -

No.	Case No. [Date of Order]	Parties Name	Sector/Industry	Nature of Remedies
1	C-2014/04/164 [29.09.2014]	Mumbai International Airport Pvt. Ltd. and Mumbai Aviation Fuel Farm Facility Ltd. Indian Oil, Bharat Petroleum ¹	Airlines fuel/ airport infrastructure facilities	Behavioural/Voluntary commitments
2	C-2014/05/170 [05.12.2014]	Sun Pharmaceutical Industries Limited and Ranbaxy Laboratories Limited ²	Pharma/Medicines	Hybrid – Structural divestments and behavioural commitments
3	C-2014/07/190 [30.03.2015]	Holcim Ltd., Switzerland and Lafarge S.A. ³	Cement	Structural/Divestments
4	C-2015/07/288 [04.05.2016]	PVR Ltd. and DLF DT ⁴	Films exhibition/ Theatre	Hybrid - Structural divestments and Behavioural commitments
5	C-2016/05/400 [08.06.2017]	The Dow Chemical Company (ii) E. I. Pont DE Nemours and Company (iii) DowDuPont Inc. (iv) Diamond Merger Sub Inc ⁵	Agro Seeds, chemicals/ protection & R&D	Hybrid – Structural divestments and behavioural commitments
6	C-2016/08/418 [13.12.2016]	Abbott Laboratories, St. Jude Medical, Inc ⁶	Healthcare products	Structural/Divestments
7	C-2016/08/424 [16.05.2017]	China National Agrochemical Corporation and Syngenta AG ⁷	Crop protection products	Hybrid – Structural divestments and behavioural commitments
8	C-2016/10/443 [27.10.2017]	Agrium Inc. (ii) Potash Corporation of Saskatchewan Inc ⁸	Potash/Fertilizer Chemicals	Structural divestments
9	C-2016/12/463 [04.05.2017]	Dish TV India Ltd. and Videocon D2H Limited ⁹	DTH/Cable TV Licensees	Behavioural commitments
10	C-2016/11/459 [29.06.2017]	Nippon Yusen Kabushiki Kaisha Ltd./ Mitsui O.S.K. Lines Ltd. and Kawasaki Kisen Kaisha ¹⁰	Shipping services/ Fright logistics	Behavioural commitments
11	C-2017/06/519 [18.09.2017]	FMC Corporation Company and E.I. du Pont de Nemours and Company ¹¹	Agro Products and Chemicals/ Crop protection R&D activities.	Hybrid – Structural divestments and behavioural commitments
12	C-2017/08/523 [14.06.2018]	Bayer Aktiengesellschaft, Germany and Monsanto Company ¹²	Agro products, Hybrid seeds/non-selective herbicides	Hybrid – Structural divestments and behavioural commitments
13	C-2018/01/545 [06.09.2018]	Linde Aktiengesellschaft and Praxair, Inc ¹³	Industrial chemicals/ helium retail market	Structural/Divestments
14	C-2018/07/586 [18.04.2019]	Schneider Electric India Private Limited and MacRitchie Investments Pte. Limited ¹⁴	Electrical components	Hybrid – Structural divestment and Behavioural commitments
15	C-2018/09/601 [14.02.2020]	Northern TK Venture Pte. Ltd./ Fortis Healthcare Limited ¹⁵	Healthcare/Super-specialty Hospitals	Behavioural/Voluntary commitments
16	C-2018/10/609 [21.01.2019]	Jio Futuristic Digital Holdings Pvt. Ltd; Jio Digital Distribution Holdings Pvt. Ltd.; Jio Television Distribution Holdings Pvt. Ltd. and Den Networks Ltd ¹⁶	Broadband/DTH	Behavioural/Voluntary commitments
17	C-2018/10/610 [21.01.2019]	Jio Content Distribution Holdings Private Limited, Jio Internet Distribution Holdings Private Limited, Jio Cable and Broadband Holdings Private Limited and Hathway Cable and Datacom Limited ¹⁷	Broadband/DTH	Behavioural/Voluntary commitments
18	C-2019/07/676 [01.10.2019]	TRIL Urban Transport Private Limited, Valkyrie Investment Pte. Ltd., Solis Capital (Singapore) Pte. Ltd. And GMR Airports Limited ¹⁸	Airports and air transport facilities/ premises services	Behavioural/Voluntary commitments

19	C-2019/09/682 [30.10.2019]	Hyundai Motor Company and Kia Motor Company ¹⁹	Automakers-radio taxi platform marketplace	Behavioural/Voluntary commitments
20	C-2019/11/703 [14.02.2020]	ZF Friedrichshafen AG and WABCO Holdings Inc ²⁰	Auto components	Hybrid - Structural and Behavioural remedies/ Voluntary commitments
21	C-2020/04/741 [30.04.2020]	Canary Investments Limited, Link Investment Trust II and Intas Pharmaceuticals Limited	Pharma	Behavioural remedies/ Voluntary commitments
22	C-020/03/735[18.06.2020]	Outotec Oyj and Metso Oyj ²¹	Mineral Processing Equipment	Structural divestments/ Voluntary commitments

Note: An investigation of the sort of cures acknowledged by the CCI shows that the CCI has acknowledged Basic cures relating to divestments in five (5) cases [22.7%], Behavioural cures with deliberate commitments in nine (9) cases [40.9%] and Crossover cures with both auxiliary and behavioural cures in eight (8) cases [36.4%].

DELHI HIGH COURT OBSERVATIONS ON IMPLEMENTATION OF PROPOSED REMEDIES

The Hon'ble Delhi High Court (DHC) in **Eaton Control Quality Ltd vs CCI & Ors**¹⁶ stated different procedural imperfections at the CCI in receiving the rules of the guideline of normal equity and delays in executing cures. The Hon'ble High Court rejected the Endorsement arrangement and the Audit Arrange passed by the CCI under Section 38 of the Act of 2002 wherein the CCI endorsed the interest and confirmation of Eaton, one of the bidder/purchasers within the offered prepare, expects to permit more extensive support within the offered prepare and afterward reviewed the Endorsement arrange through the Survey Arrange coordinating preclusion of Eaton from the usage prepare. The Delhi High Court stated that as both of the CCI's orders were adjudicatory/quasi-judicial in nature and considerably influenced the rights of the parties, such orders are exterior the locale of the CCI and were procedurally defective. The CCI needs the statutory control of Survey, which was explicitly taken absent by the Governing body vide the Competition (Alteration) Act of 2007 under Section 37 of the Competition Act.

In this case, a combination notice was given to the CCI by Schneider Electric India Private Limited (Schneider) for the securing of the electrical and mechanization trade of Larsen & Toubro Limited (L&T) and the securing of 35% shareholding in Schneider by MacRitchie Ventures Pvt. Ltd. The CCI in the year 2019 allowed conditional endorsement to the proposed combination and forced certain behavioural cures considering the generally showcase for moo voltage (LV) switch gears in India where Schneider and L&T were the topmost advertise shareholders within the E&A trade. The CCI shaped a prima facie conclusion that the proposed combination will likely hurt Competition within the LV Switchgear trade in India and based on its a preparatory evaluation of the showcase position of the combining parties, showcase share, concentration levels (HHI), section conditions, nature of dispersion organize and advancement, etc., the CCI stripped 15 item markets that were exceedingly

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concentrated and where the combined showcase offers of the parties were on a normal of 30%. At the cluster level, 6 products were distinguished where the combined showcase offers of the parties were within the run of 55-60%

The CCI after making a point by point Stage II request into the proposed combination advertised certain cures be that as it may, afterward acknowledged the behavioural commitments/remedies advertised by the parties as elective cure bundles. The CCI acknowledged white naming of certain items as a satisfactory cure to address the competitive imperatives within the pertinent market. This White Naming could be a handle by which Schneider's competitors would be reinforced, to empower them to compete more successfully within the Indian showcase. White labelling/brand labelling¹⁷ as a cure equalizes the products from the overwhelming combined substance, with the items sold by different other substances within the pertinent showcase, guaranteeing no unequal showcase share position for the combined substance. The CCI imposed the following remedies –

¹⁷ 'White Labelling' is a unique arrangement wherein the products are manufactured by one manufacturer and are passed on to another manufacturer/distributor without a brand or a logo on it. The latter manufacturer/distributor can then affix its own brand and logo and sell the said product, as its own. This mechanism ensures, purportedly, that the product of the same quality is being made available to the consumer from two different sources i.e., the manufacturer of the product and the second entity (latter manufacturer/ distributor), which is selling the product – so as to provide for the same level of competition.

¹⁶ *Eaton vs CCI, W.P.(C) 6797/2020 & CM APPL. 23544/200 (DHC), dated 10.09.2021.*



1. Sharing of books, accounts, administration staff, offices, information, secret data;
2. Send out commitments concerning a rate of the introduced capacity of the items in address;
3. Alterations to Schneider's Distributorship Assertions and Commercial Arrangement to evacuate any obstructions which energize de facto exclusivity;
4. Estimating cures under which, a cap was settled on the net offering cost of the items in address for 5 a long time from the date of closing;
5. Allotment of least Investigate and Improvement Reserves for 5 a long time, to be went through in India within the final 3 a long time some time recently Closing;
6. Keep up steady Investigate and Improvement headcount, in line with the existing headcount as of the date of Closing, of L&T in India;
7. Ban on supplanting or expanding the number of wholesalers;
8. Non-rationalization of L&T's LV switchgear items for 5 a long time from the date of Closing, within the Indian showcase;
9. Allowing of non-exclusive innovation exchange permit for 5 a long time from the expiry of the White Naming period to a single third-party;
10. Not make any commercial offer or lock in in a managing concerning any or all of the LV switchgear

items that have the impact of weakening the impact and /or goals of the adjustments advertised by the Acquirers.

To monitor and oversee the effective implementation of the proposed corrective actions under CCI's overall oversight, CCI appointed Moore Shingi Advisors LLP (MS Advisors) as its oversight body and invited various parties to express interest. Eaton (the plaintiff in this case) was excluded from the bidding process after a technical error prevented it from submitting the relevant documents within the specified deadline.

The Delhi High Court authorized Eaton to participate in the first round of the White Label Agreement and directed Schneider to conclude and implement the White Label Agreement by September 30, 2021, provided that Eaton's participation will not affect the completed agreement and ongoing negotiations. In addition, Delhi High Court has instructed CCI to initiate a second round of Expressions of Interest (EOI) for the remaining capacity once one of the white label contracts is completed by September 30, 2021. The oversight authority and the Chamber of Commerce will have sought to finalize the White Label Agreement by December 31, 2021, in particular to ensure that negotiations do not continue indefinitely after the merger is completed.

The Delhi High Court was majorly concerned with the two of the cures proposed by the CCI - White Naming and the exchange of considerable non-exclusive innovation exchange licenses to the bidder/purchaser. The White Naming Courses of action for five years, coupled with an

innovation exchange permit understanding with at least one party, who would have profited of the White Naming cure for any of the five items and would have executed the White Naming Course of action for three ceaseless a long time, would fortify competitors profiting services and with quality items of L&T and get to a more extensive conveyance organize, the recipients of the white naming course of action may build up its brand within the showcase. With the execution of the White Naming Understandings, the items made would be provided by Schneider to the third-party producers, at a settled cost for five years.

After five years, Schneider would ought to enter into a non-transferable, non-sub licensable, non-exclusive technology transfers permit understanding for the following five a long time. The technology transfer permit understanding will empower the bidder to secure capabilities in regard of the most recent innovation and the implementation thereof, inside its fabricating plant. The proposed cures required steady observing for more than ten (10) years and suffered from consistent delays.

OBSERVATIONS & CONCLUSIONS

Since the beginning of Competition laws in India, the CCI has been able to get to different markets, majorly in cement, genuine bequest, pharma, telecom, amusement, etc., a wide diagram of Indian markets from 2011 to 2023 appears that numerous markets/sectors have gone major combinations, taking off as it were a number of major players within the advertise. For Illustration, the Indian Telecom segment has seen major solidifications with 10-12 players working in India in 2010 to as it were 3-4 major players operational presently. The section of the huge player – Reliance Jio has moreover changed in general Indian telecom. Within the cement division, major solidifications were affirmed by the CCI and with the passage of a major player – Adani Group and the recent exit of Holcim from the Indian markets offering its stake in ACC and Ambuja to Adani Group, the Indian cement division has seen a same past as the telecom segment.

CCI's decisional practices appear that the CCI has been endeavouring to neutralize the antagonistic impacts on competition and boost the competition. Be that as it may, the CCI is more versatile in talking about conceivable cures in most cases and acknowledges the elective cures advertised by the parties (tolerating deliberate or elective cures in most cases). The CCI has as it were taken a modest bunch of 5% - 6% of cases within the add up to of 900 cases where the CCI has gotten to the combination and conducted a nitty gritty request into the proposed combination (under Stage II and Stage I). Rest 94% of combinations endorsed in Stage I (Form I) without any remedy/modifications. In this 6% of the combinations endorsed with cures, the CCI designate an outside autonomous Checking Agency¹⁸ to execute and supervise the working of the combination under the supervision of the CCI and yield its report upon completion of the combination and alteration/ cures. In

any case, it has been seen that whereas conducting the point by point request, the CCI numerous times don't take after the guideline of common equity and choices are articulated without managing openings for hearing to parties.

A diagram of the universal best practices appears that universally competition specialists have created directing standards and ponders for building up different procedural contemplations whereas planning basic and behavioural cures, their viable execution and observing, making strict timelines, and taking an occasional audit of combinations pre- and post-consummation to bring straightforwardness and consistency. Such rules diminish the dangers related with successful execution of the proposed cure and circumstances where consolidating parties intentioned chose a powerless buyer and delay the method to dodge the development of competitive limitations within the showcase.

For auxiliary cures, competition specialists guarantee that the proposed divestiture must incorporate all resources essential for the buyer to be a viable, long-term competitor within the showcase. Competition specialists tend to lean toward the divestiture of an existing standalone trade and divestiture of more than an existing standalone trade may be required when it is vital to protect competition. Assist, a resource carve-out comprising of less than an existing standalone trade has been considered in constrained circumstances.

Competition specialists are actively involved in recognizing the correct buyer for the divestiture and deciding the terms of the divestiture deal. It is seen that fruitful divestiture does not depend on the cost paid for the divestiture resources.

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- i. *Competition Act, 2002*
- ii. *Competition Commission of India (Procedure in regard to the transaction of business relating to combinations) Regulations, 2011*
- iii. *Proceedings against Amazon.com NV Investment Holdings LLC under Sections 43A, 44 and 45 of the Competition Act, 2002. Order dated 17 December 2021, available at https://www.cci.gov.in/sites/default/files/Notice_order_document/Order-688.pdf.*
- iv. *Amazon vs CCI & Ors, Competition Appeal (AT) No. 01 of 2022, along with No. 02 of 2022 and No. 03 of 2022, NCLAT, Principal Bench.*
- v. *The EU trustee mandate agreement form accessible at https://ec.europa.eu/competitionpolicy/system/files/202103/trustee_mandate_en.pdf*
- vi. *Eaton Power Quality Ltd vs CCI & Ors, Delhi High Court, W.P.(C) 6797/2020 & CM APPL. 23544/200 (DHC), dated 10.09.2021.*

¹⁸. Reg. 27 of the Combination Regulations

- vii. *US Merger Remedies Manual*, Antitrust Division, Department of Justice, 2020, available at <https://www.justice.gov/atr/page/file/1312416/download>
- viii. *ICN Merger Working Group, Merger Remedies Guide*, 2016, available at https://www.internationalcompetitionnetwork.org/wpcontent/uploads/2018/05/MWG_RemediesGuide.pdf.
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