

## Supreme Court Sets Aside CCI Penalty Order in Amazon-Future Coupons Case: Clarifies Key Merger Control Principles

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The Supreme Court of India (SC) set aside the Competition Commission of India's (CCI) penalty order dated 17 December 2021 (CCI Order) and the National Company Law Appellate Tribunal's (NCLAT) judgment dated 13 June 2022 in *Amazon.com NV Investment Holdings LLC v Competition Commission of India & Ors.*

### Brief Background

In 2019, Amazon proposed to acquire a 49% stake in Future Coupons Private Limited (FCPL), a Future Group promoter-group entity with significant shareholding in Future Retail Limited (FRL). The transaction was notified to the CCI in Form I on 23 September 2019, disclosing the FCPL Shareholders' Agreement (FCPL SHA), the FRL Shareholders' Agreement (FRL SHA), and five Business Commercial Agreements (BCAs). The CCI approved the transaction on 28 November 2019.

In June 2021, following a complaint by FCPL, the CCI issued a Show Cause Notice (SCN) to Amazon alleging that it had failed to disclose the true scope of the transaction and had mischaracterised it as a limited investment while concealing its strategic interest in FRL's retail business. The CCI Order kept the approval dated 28 November 2019 in abeyance, directed a fresh Form II filing, and imposed penalties of INR 202 crore (~USD 24.3 million).

The NCLAT substantially upheld the CCI's findings. The SC reversed these findings, on the grounds set out below.

### Key Findings of the Supreme Court

#### A. Mischaracterisation Is Not Non-Notification

The SC clarified that Regulation 9(4) of the Combination Regulations requires that where a transaction comprises multiple inter-connected steps, a single notice needs to be filed. The SC held that this obligation is met when the relevant instruments are placed before the CCI, and the linkages between them are explained, whether in the notice itself or in responses furnished during review. Once these conditions are met, the CCI can assess the transaction in its substance regardless of how the notifying party has described the instruments. The SC further clarified that since the FRL SHA and all five BCAs were disclosed to the CCI in respect of the FRL-facing aspects, a later disagreement about characterisation does not convert disclosure into non-disclosure.

#### B. A Filed and Approved Notice Is Not a Failure to Notify (Section 43A)

The SC held that Section 43A of the Competition Act, 2002 (Act)<sup>1</sup> is triggered only by the specific default of not filing a notice at all. Where a notice was in fact filed, reviewed by the CCI, and resulted in approval before the combination took effect, Section 43A cannot be applied merely because of how the disclosed materials were characterised.

<sup>1</sup> All references to sections in this article are made with reference to the Competition Act, 2002.

The SC drew a firm line between two distinct situations: failing to notify a combination, which is governed by Section 43A, and filing a misleading notice, which is governed by Sections 44 and 45.

#### **C. Statutory Ingredients under Sections 44 and 45 (False Statements, Material Omissions, and Wilful Suppression of Documents)**

The SC held that Sections 44 and 45 are penal provisions and require clear findings on (i) the specific false statement or omitted material particular, (ii) materiality of the false statement or omitted material particular to the CCI's assessment of appreciable adverse effect on competition, and (iii) the requisite knowledge or wilfulness of the notifying party.

These provisions are not attracted merely because the CCI prefers a different description that was otherwise disclosed.

The SC remarked that the CCI Order did not address how each statutory ingredient was met and equated differences in characterisation and internal communications (i.e., internal emails) with material or wilful suppression of documents required to be furnished under the Act.

#### **D. The One-Year Jurisdictional Bar**

Section 20(1) bars the CCI from initiating any inquiry into a combination after one year from the date it takes effect. The SC held that this is a jurisdictional limitation, not a procedural guideline. The purpose of the provision is to provide certainty and finality to implemented transactions.

Since the SCN was issued in June 2021 and the CCI Order of December 2021 came more than one year after the transaction had taken effect, the SC found that the CCI lacked jurisdiction to redirect a filing under Form II and conduct a fresh competitive assessment.

#### **E. No Statutory Power to Keep Approval in Abeyance**

The SC held that neither the Act nor the Combination Regulations confer a power on the CCI to keep an approval in abeyance or require a fresh notification after unconditional approval has been granted.

In particular:

- Section 45(2) is a penal provision and does not empower the CCI to revisit its approval under Section 31(1); and
- the Act contains no power to revoke a Section 31(1) approval, making it impossible to imply a lesser power to suspend it.

#### **F. Breach of Natural Justice**

The SC found that the proceedings were procedurally unfair since the SCN focused on how the FRL SHA was characterised, but the final order placed heavy reliance on Amazon's internal communications without giving Amazon a meaningful opportunity to address them. Specifically, the SCN asked Amazon to explain why the FRL SHA was not properly notified, but the CCI Order relied decisively on internal communications never flagged as key evidence, and imposed directions keeping the approval in abeyance. Amazon had no real opportunity to address either. The SC observed that where the line of inquiry in proceedings expands beyond its original scope, a supplemental notice is required.

### **Comments**

The judgment is significant in affirming that, while the CCI is entitled to examine transactions on a substance-over-form basis, that inquiry must remain anchored in the statutory framework, supported by reasoned findings, and conducted in accordance with the principles of natural justice.

The decision also underscores that confidence in the merger control regime depends as much on fair regulatory process as on substantive outcomes. Clear notice, proportionate remedies, reasoned decision-making, and adherence to statutory limits are not procedural formalities but essential safeguards that support confidence in the regulatory framework.

Going forward, the judgment is likely to serve as an important reference point on merger notification obligations, the scope of the CCI's post-approval powers, and the standards required to sustain enforcement action under the Act.

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