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Federation of Hotel & Restaurant Associations of India (FHRAI) vs MakeMyTrip India Pvt. Ltd. (MMT), Ibibo Group Private Limited (Ibibo) and Oravel Stays Private Limited (OYO)

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M/s Manjeet Plastic Industries vs. Tamil Nadu Textbook and Educational Services Corporation and Ors.



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SAIKRISHNA & ASSOCIATES
ADVOCATES

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Compiled By:



Subodh Prasad Deo

Partner & Head of
Competition Law Practice
subodh@saikrishnaassociates.com



Anima Shukla

Associate
anima@saikrishnaassociates.com

Noida Office

8th Floor, V.J. Business Tower,
Plot No. A6, Sector 125,
Noida, UP - 201301
T: +91-120.4633900

New Delhi Office

#10, 1st Floor, Jor Bagh,
New Delhi - 110003
T: +91.11.40244360

Mumbai Office

#134/A, Mittal Towers,
210 Nariman Point, Mumbai - 400021
T: +91-22-68605151

Contact

E: info@saikrishnaassociates.com
E: complaw@saikrishnaassociates.com

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Air Works India (Engineering) Private Limited vs GMR Hyderabad International Airport Limited and GMR Aero Technic Limited (GAT):¹



Air Works India (Engineering) Private Limited ('Informant') filed an information against GMR Hyderabad International Airport Limited and GMR Aero Technic Limited (GAT) (Opposite Party/'OP'/'GMR') alleging abuse of dominance under the Act. GAT is a wholly owned subsidiary of GMR Aerospace Engineering Ltd., which in turn is a wholly owned subsidiary of GMR.

The Informant is a provider of third-party services to airlines and general aviation, namely, the Line Maintenance Services and the Base Maintenance Services, collectively referred to as the Maintenance, Repair and Overhaul ('MRO') services. As per the given facts, the Informant maintains 43 aircraft types in India under the approval granted to it by DGCA and provides Base maintenance services at one airport and Line Maintenance Services at 19 airports in India, including Rajiv Gandhi International Airport, Hyderabad ('RGIA'). The Informant has been uninterruptedly providing these services at RGIA, to various airlines since 2011, for facilitation of which a License Agreement was executed between the Informant and GMR on 20.12.2011, which was further

renewed till 22.03.2019. In terms of the said License Agreement, the Informant was given access to an area of 96.04 sqm inside the RGIA for setting up, operating and maintaining the Airline Engineering Maintenance Office and Warehouse. Before the expiry of the Renewed License Agreement, the Informant approached GMR for further extension which was apparently denied by GMR stating that it needs the space allocated to the Informant for their on-going expansion work at RGIA.

The Informant alleged that GMR, owing to its sole control over the airport premises (i.e. RGIA), denied access to the Informant with an intent to give advantage to its group company, i.e. GAT, (established in 2017) which competes directly with the Informant at RGIA for providing Line Maintenance Services. It also alleged that GMR and GAT have started poaching the Informant's technically skilled employees and have resorted to sending of emails to its customers to avail the Line Maintenance Services of an alternate vendor. Thus, the alleged abusive conduct was of denial of market access (i.e. denying access to the

space at the airport premises); leveraging of dominant position in the upstream market to protect the downstream market; and, limiting and restricting provision of services by Informant and adversely affecting competition in the market for such services.

In order to analyse the allegation, the CCI delineated the relevant market as the 'market for provision of access to airport facilities/premises at the RGIA'. It was however of the view that since 'the case is of denial of market access as well that of leveraging, two markets need to be identified, first relevant market, in which the erring entity is alleged to be dominant and the second (downstream) market in which the said entity is protecting its position, directly or indirectly, by exercising abuse in the upstream market. It thus delineated the relevant markets as under: i) Upstream Market: 'market for provision of access to airport facilities/premises at the RGIA' ii) Downstream Market: 'market for provision of Line Maintenance Services at the RGIA'.

Given the fact that, in terms of the concession agreement, the Government of India had granted GMR/GHIAL the exclusive

right and privilege to carry out the development, design, financing, construction, commissioning, maintenance, operation and management of the Airport for a period of 30 years, the CCI held GMR/GHIAL to be dominant in the 'market for provision of access to airport facilities/premises at the RGIA'.

As regards abuse, the CCI did not deem it to be a contractual issue even though the Renewed License Agreement explicitly allowed termination of the Agreement by efflux of time i.e. by 22.03.2019 but that of alleged abuse of dominant position by an enterprise enjoying such dominance in the upstream market. The CCI further observed that as a general principle every entity, dominant or otherwise, has freedom to choose its trading partners and refusal to deal is not per se sufficient to conclude contravention of the provisions of the Act. However, it noted that a refusal to deal by a dominant enterprise/undertaking may

constitute an abuse if three conditions are met: (a) the refused input is indispensable for an entity in order to compete on the downstream market; (b) refusal shall most likely eliminate competition on the downstream market; and, (c) refusal shall most likely damage consumers.

As regards indispensability (lack of substitutable input), the CCI observed that the access to the airport facilities/premises is an essential facility as all the economic conditions necessary for it are satisfied in this case, namely, the dominant entity controls access to the facility; the facility cannot reasonably be duplicated by the competitor; the dominant entity denies access to the competitor; there are no alternative means of entering the relevant market at a reasonable cost without having access to the essential facility; there must be spare capacity on the facility in question.

As regards elimination of competition on the

downstream market, the CCI held that as per the information, the level of competition in the downstream market is low, since apart from the Informant, the only other significant / dedicated service provider of Line Maintenance Services is GMR's own group company GAT. The Informant allegedly held 53% market share while GAT held 27% market share in the downstream market for provision of Line Maintenance Services at the RGIA'.

The CCI further held that the alleged conduct by GMR has the potential to limit and restrict the provision of Line Maintenance Services and the technical development relating to provisioning of such services to the prejudice of consumers, thus, fulfilling the third condition.

The CCI thus observed that the conduct of GMR was prima facie an abuse of its dominant position and directed further investigation into the matter.

¹Case No. 30 of 2019 (site: <https://www.cci.gov.in/sites/default/files/30-of-2019.pdf>, last accessed: 08.11.2019)

Federation of Hotel & Restaurant Associations of India (FHRAI) vs MakeMyTrip India Pvt. Ltd. (MMT), Ibibo Group Private Limited (Ibibo) and Oravel Stays Private Limited (OYO):²

The Federation of Hotel & Restaurant Associations of India ('FHRAI'/'Informant') filed a complaint against MakeMyTrip India Pvt. Ltd. ('MMT'), Ibibo Group Private Limited (hereinafter, 'Golbibo'), collectively referred to as 'MMT-Go' and Oravel Stays Private Limited ('OYO') (collectively 'Opposite Parties'/'OPs') alleging violation of Section 3 (prohibition of anti-competitive agreements) and Section 4 (prohibition on abuse of dominant position) of the Act.

The OP's are Online Travel Agencies ('OTA') engaged in the business of providing travel and tourism related services in India. Apart from the OP's, booking.com, yatra.com, cleartrip.com, expedia.com etc. are operating as OTAs in India, alternatively known as the domestic OTAs. While MMT and Golbibo merged vide CCI approval dated 18.01.2017, resulting in their dominance in the relevant market, OYO was said to have gained significant competitive advantage and

secured a position of dominance in the relevant market of budget accommodation through its platform.

The Informant is aggrieved with the alleged malpractices of MMT, inter alia, including predatory pricing, charging of exorbitant commissions from hotels, registering and providing on its platform illegal and unlicensed bed & breakfast and misrepresentation. The Informant has further alleged that the Opposite Parties have abused their respective dominant positions and have entered into anti-competitive arrangements/agreements. It has been further alleged that MMT-Go have imposed a price parity in their agreement/contract with hotel partners whereby the hotel partners are not allowed to sell their rooms at any other platform or on its own online portal at a price below the price at which it is being offered on MMT-Go's platform. It has been alleged that chain hotels/ hotel

aggregators namely Treebo and Fab Hotels have been denied market access. They have been allegedly removed from the platform of MMT-Go as they did not agree to pay the exorbitant commission brokerage charged. Further, MMT and OYO are alleged to have entered into confidential commercial agreements wherein MMT has agreed to give preferential treatment to OYO on its platform. Even when a hotel makes a request to be removed from their platform/portal, the hotel, instead of being removed from the platform, is shown as "no rooms available" or "sold out", which severely affects the business of the hotels. Thus, the allegation against the Opposite Parties is of charging excessive commissions from the hotel partners and providing deep discounts which have led to the destruction of competitive pricing in the market.

The CCI, citing its observations in the Fast Track Call Cabs matter, dismissed the

allegation of collective dominance, being beyond the legal framework of Section 4 of the Act. As regards their unilateral abusive conduct, the CCI delineated the relevant market from the perspective of hoteliers having regard to the fact that the OPs operated as platforms catering to multiple set of consumers. In other words, the relevant product market in the instant case should include all alternatives available with such hotels and the competitive constraints faced by the focal product i.e. the service provided by the Opposite Parties in the present matter. Accordingly, based on the delineation of relevant market in Case No. 03 of 2019 (RKG Hospitalities Pvt. Ltd. vs.

Oravel Stays Pvt. Ltd.) wherein the relevant market aspect to assess the position of OYO in the said relevant market was discussed in detail, the CCI delineated the relevant market for OYO as 'market for franchising services for budget hotels in India'. But as regards MMT-Go's reliance upon CCI's order in Combination Registration No. C – 2016/10/451 (acquisition of 100% of Ibibo Group Holdings by MMT Ltd) dated 18.01.2017, wherein hotel bookings by both online and offline modes were assessed to be in the same relevant market, the CCI observed that the relevant market for MMT-Go would be 'market for online intermediation services for booking of hotels in India' in view of the current market realities and competition dynamics whereby due to the increased popularity and use of OTAs by a large segment of consumers in India, hotel operators now perceive them as a distinct mode of distribution which cannot be simply replaced or substituted by other offline modes or direct sale without losing out significantly on consumer reach.

As regards dominance, the CCI held MMT-Go to be prima facie dominant in the relevant market, based on their own investor presentation wherein MMT-Go as a group was said to hold 63% of domestic hotel online market share in 2017 in the online intermediation market for booking of hotels. With regard to OYO, the CCI placed reliance on Case No. 03 of 2019 and held prima facie that OYO does not hold a dominant position, despite being a significant player in the 'market for franchising services for budget hotels in India'. With regard to the abusive conduct, the CCI held that agreement between MMT-Go and hoteliers, which provided for room and price parity between

platforms and any other sales channel (i.e., Across Platform Parity Agreements (APPAs), popularly referred to as 'retail Most-Favoured Nation (MFN) clauses'), was prima facie anti-competitive as such price and non-price restrictions by a dominant entity may result in removal of the incentive for platforms to compete on the commission they charge to hoteliers, and may have in flat the final prices paid by consumers and prevent entry from new low cost platforms. Accordingly, this necessitated such parity restriction to be investigated to gauge its impact under Section 3(4) as well as Section 4 of the Act.

With regard to denial of market access, it was observed that two of the closest competitors of OYO i.e. Fabhotel and Treebo were not present on the MMT-Go platform, which the Informant alleged was pursuant to a commercial agreement between amongst the OP's. This as per the CCI merited investigation to find out whether the commercial agreement between OYO and MMT entails preferential treatment to OYO and consequent exclusion of Treebo, Fab hotel and any other hotel chain and if so, the effect of the same on competition.

With regard to predatory pricing, the CCI observed that since MMT-Go has been prima facie found to be in a dominant position in the relevant market and they have been in business since the year 2000, such practice by them does not appear to be introductory or aimed at building the network. But since it did not have the cost structure of MMT-Go, hotels and the prices charged by hotels and discounts offered by MMT-Go, it considered it fit to be investigated along with other issues.

On the issue of exorbitant/unfair commissions, the CCI observed that there was no standard to determine what was excessive, and did not find it appropriate to deal with the issue as the market structure, entry conditions, cost structure of platforms remained to be investigated.

With regard to the allegation of misrepresentation against MMT-Go, where they refused to delist rooms of those hotels who severed their ties with it, but, instead showed them as unavailable, the CCI observed that the same has the potential to deny market access to such hotels which also has an adverse effect on consumer welfare as it creates a perception amongst the consumers into believing that the hotel is booked which would potentially further deter them from using alternate platforms to book a room with them. The CCI also felt the need to test the veracity of the justification offered by MMT-Go regarding the Informant's allegation that they artificially create demand-supply gap on its platform and accordingly fluctuate prices. As regards the charging of discriminatory service fee by MMT, as such fee is levied on certain hotels and allegedly not levied on high-end of chain hotels, CCI noted that this conduct of MMT merits investigation since MMT is prima facie found to be dominant.

Based on the above, the CCI opined that there exists a prima facie case for investigation against MMT-Go and OYO for alleged violation of the provisions of Section 3(4) of the Act and against MMT-Go under Section 4 of the Act. Accordingly, it directed the DG to conduct an investigation within 150 days and submit its report.



²Case No. 14 of 2019 (site: https://www.cci.gov.in/sites/default/files/14of2019_0.pdf, last accessed: 08.11.2019)

M/s Maa Metakani Rice Industries vs State of Odisha and Odisha State Civil Supplies Corporation Ltd:³



The present information has been filed by M/s. Maa Metakani Rice Industries, ('Informant') against the State of Odisha, represented through Commissioner-cum-Secretary, Food Supply & Consumer Welfare Department (FS & CW Department), Government of Odisha ('Opposite Party No. 1/OP-1') and Odisha State Civil Supplies Corporation Ltd. ('Opposite Party No. 2/OP-2') (collectively 'Opposite Parties/OPs') alleging abuse of dominance under the Act.

The Informant is stated to be in the business of rice (paddy) milling, production of rice, broken rice, bran, etc. and sale thereof, to act as Custom Milling Agent of OP-2 for the aforesaid purpose and to undertake custom milling on account of Food Corporation of India ('FCI') and several other government agencies. Custom Milled Rice ('CMR') is manufactured by milling the paddy procured by State Government/State agencies and FCI. All the rice mills in the State including that of the Informant, are totally dependent on OP-2 to run their rice mills as it is the largest agency involved in paddy procurement in the State of Odisha,

purchasing more than 90% of the total paddy produced in the State.

The allegation against OP2 pertains to imposition of unfair and discriminatory conditions in purchase of service from the Informant and it could be deduced that OP-2 acted in an exploitative and exclusionary manner. The Informant also alleged that it is being subjected to high handedness, arbitrariness and complete abuse of dominant position by the OPs, causing huge economic hardship owing to the high handed approach adopted by OP-2 by delaying the settlement of the Custom milled rice ("CMR") dues and also not settling the claim with the insurance company and paying off the legitimate dues of the Informant.

In this regard, the CCI observed that OP-1 lays down procurement policy and passes orders etc. and OP-2 carries out the activities related to procurement in the State of Odisha and since OP-2 appears to be engaged in economic activities of procurement of paddy, custom milling of rice and distribution of rice and thus, it will be an

'enterprise' within the meaning of Section 2(h) of the Act.

As regards dominance, the CCI delineated the relevant market as 'market for procurement of custom milling services for Rice in State of Odisha'. Given the OP2's market share in rice procurement, and also delivery, the CCI observed that OP-2 was dominant in the relevant market.

As regards abuse in the relevant market, the CCI observed that the conduct of OP-2 in non-settlement of CMR dues of the Informant and imposition of unfair condition by it upon millers for entering into agreement for CMR, despite letter dated 06.11.2018 of All Odisha Rice Millers Association ('AORMA') pertaining to alleged non-clearance of dues/arrears, incorporating details about scope of work and rates payable thereof in the Agreement before execution and formulation of a suitable policy, amounts prima facie to be an abuse of dominant position.

The CCI accordingly directed investigation into the matter under Section 4 of the Act.

³Case No. 16 of 2019 (site: <https://www.cci.gov.in/sites/default/files/CaseNo16of2019.pdf> , last accessed: 08.11.2019)

M/s Manjeet Plastic Industries vs. Tamil Nadu Textbook and Educational Services Corporation and Ors.:⁴

The present Information had been filed by M/s Manjeet Plastic Industries ('Informant') against Tamil Nadu and Textbook and Educational Services Corporation ('Corporation'/ 'OP-11') and 10 bidders (collectively referred as OP's) alleging collusive bidding and abuse of dominance. The main grievance was with a corrigenda that had been issued in relation to a tender with regard to supply of school bags to government schools in the State of Tamil Nadu, which had been issued by the Corporation.

The Informant alleged that the main aim of the corrigendum was to limit competition, and that is why it was issued two days before the official submission of bids. The Informant further emphasised his point by stating that the selected bidders were never involved in manufacturing of school bags, and had even submitted samples that had the same marking under the bidding process, which showed that they had colluded.

In this regard, the CCI observed that issuing of such corrigenda to the tender did not violate any procedure, which was also admitted by the counsel for the Informant. Based on the facts and evidence before it, the CCI also did not find any force in the contention of the Informant that the corrigendum dated 26.04.2019, allowing for the submission of consortium bids, indicated any collusion as the condition with respect to permitting the participation of consortium



was amended along with several other conditions by the Corporation. The CCI also emphasised that the tendering authority has the right to set the tender terms and conditions. As regards similar markings on the samples, it was observed by the CCI that during the pre-bid meeting the prospective bidders were shown the samples with the markings and the impression was attained that the samples had to be submitted with

the markings. However, the samples with markings were submitted which were then not accepted by the Corporation and all the bidders were asked to resubmit the samples. Further, price parallelism could not be looked into since the bids had not opened. Thus, the CCI stated that the allegations are based on mere conjecture and suspension with regard to collusive bidding. Accordingly, the CCI closed the matter.

⁴Case No. 27 of 2019 (site: https://www.cci.gov.in/sites/default/files/CaseNo27of2019_0.pdf, last accessed: 08.11.2019)

Ms. Vijayachitra Kamalesh vs. RCI India Private Limited.⁵

Ms. Vijayachitra Kamalesh ('Informant') filed an information against RCI India Private Ltd. ('RCI') alleging that the Agreement between the Covington S.A.R.L. [An Subsidiary of Mahindra (Mauritius)], Mahindra (India) and RCI Europe for purchase of shares of Holiday Holiday Club Resorts OY ("Holiday Club") as

anti-competitive since it was disrupting competition in the timesharing market. ⁶

Since the acquisition was taking place outside India, i.e. in Finland, the CCI applied the "effects doctrine" to observe if the alleged conduct had any impact on the

competition in Indian markets since the conduct was outside India. The CCI further observed that the agreements being referred to as anti-competitive have not been provided by Informant, hence nothing on the record shows that it causes AAEC in India. Accordingly, the CCI closed the matter.

⁵Case No.29 of 2019 (site: <https://www.cci.gov.in/sites/default/files/CaseNo29of2019.pdf>, last accessed: 08.11.2019)

⁶A timeshare is a model in which customers own a right to use certain property/ properties, owned by timeshare companies, for a fixed duration every year for a certain number of years, subject to availability. The timeshare model can apply to many different types of properties, such as condominiums, homes, campgrounds, vacation resorts etc., Case No.29 of 2019, Para 8.

Suresh Chander Gupta vs. Vakita Limited.⁷



Suresh Gupta ('Informant') entered into a Builder Buyer Agreement ("BBA") with Vatika Limited ('Opposite Party'/'OP') for purchase of a Commercial Property in Block – D of 'Vatika Town Square' which was in Gurugram and had almost paid 40% as advance for the same, while the project was still under construction. Since the Informant was not given the possession in time he asked for a refund with deductions, but received no response, and later Vatika even started demanding high costs for possession, even while the construction was still on-going. The Informant, accordingly filed an

information in the CCI alleging that the BBA was one-sided, imposed unfair conditions and protected the builder from all foreseeable or un-foreseeable events at the cost of buyers. It was also alleged that Vatika had not taken appropriate action to promote 'Vatika Town Square' and was probably diverting funds collected from Block-D for other projects, and the BBA was silent on the obligation to inform buyers and take mitigating measure in case of force majeure events.

The CCI clearly stated that the no case of anti-competitiveness is made out, since the

Informant is a consumer, and the same does not fall within the ambit of the Act. With regards to the OPs and OP's dominance and its abuse thereof, the CCI opined that the relevant market would be "provision of services for development and sale of commercial space in Gurugram". The CCI observed that several other players were present in the relevant market, and imposed competitive restraints on the OP, hence it was not in a dominant position, and no case of abuse of dominance could be made out against it. The CCI accordingly closed the matter.

⁷Case No. 26 of 2019 (site: <https://www.cci.gov.in/sites/default/files/26-of-2019.pdf>, last accessed: 08.11.2019)

Ashok Suchde vs. Pernod Ricard India Private Limited:⁸

Mr. Ashok Suchde ("Informant") filed an information against Pernod Ricard India Pvt Ltd ('Opposite Party'/'OP') alleging anti-competitive and abuse of its dominant position. The Informant is the proprietor of Vyn marketing, which had been a service provider for OP, to assist the OP with procurement and distribution of alcohol from distributors/ wholesalers, etc. The informant alleged that OP terminated the agreement without any reason despite it discharging its

obligations under the agreement, without any proper notice. Thereafter, the OP entered into settlement agreement with the Informant. The Informant submits that after termination, OP entered into a new agreement with ZK marketing as its new service provider due its political and bureaucratic connections, despite there being a ban on issue of new licences by the Excise Department, Dadra and Nagra Haveli, and alleged quid pro quo, he further alleged

corruption in government department, violation of French law and Code of Conduct by the OP etc.

The CCI observed that since post-termination of the Agreement, a settlement had been reached, but still looked into the allegations the Informant had raised and concluded that the same did not raise nay competition law issue under the Act, and closed the matter.

⁸Case No. 25 of 2019 (site: <https://www.cci.gov.in/sites/default/files/25-of-2019.pdf>, last accessed: 08.11.2019)

Sainath Autolinks Pvt. Ltd. vs. State Bank of India and State Bank of India, (through its Branch Manager, Durgarpur, West Bengal):⁹



Sainath Autolinks Pvt. Ltd ('Informant') had opened a Supply Chain Finance Unit ('SCFU') with State Bank of India, Durgapur, West Bengal ('Opposite Party No. 2''OP-2'), a regional branch of State Bank of India ('Opposite Party No. 1''OP-1') via a letter of arrangement for payments to be made to Maruti Suzuki India Limited (Maruti Suzuki) for dispatch of cars, since the Informant was an authorized dealer of Maruti Suzuki, and the sales proceeds of the cars would also be deposited in the same account. After a "reconciliation and audit exercise" that OP-2 undertook, it was communicated to one

credit entry had been captured twice and one debit entry had been missed and that the Informant was liable to pay Rs. 2.13 Crore to OP 2. The Informant asked for an explanation, but since no explanation was given till 11.09.2018, the Informant was compelled to pay due to a threat by OP 2 of transferring the account to NPA category.

The Informant alleged that the terms of the letter of arrangement were unfair, discriminatory and favors the OPs which was abuse of dominance on their part. The CCI took into account the allegations that had been raised and moved ahead to assess

the dominance of the OPs, for which it delineated the relevant market as 'market for portions of loans to MSMEs in the State of West Bengal'.

The CCI observed that no evidence was provided to show that the OPs had a dominant position, and the market share for OP-2 in West Bengal was around 11% in 2018-19. Furthermore, other national banks were also present which meant the OPs could not operate independently and had significant competitive restraints on them. Accordingly, the CCI closed the matter.

⁹Case No. 15 of 2019 (site: <https://www.cci.gov.in/sites/default/files/15-of-2019.pdf>, last accessed: 08.11.2019)

MERGERS APPROVED BY THE CCI

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¹⁰C-2019/05/661 (site: https://www.cci.gov.in/sites/default/files/notice_order_summary_doc/C-2019-05-661.pdf, last accessed: 08.11.2019)

¹¹C-2019/09/683 (site: https://www.cci.gov.in/sites/default/files/Notice_order_document/C201909683foruploading.pdf, last accessed: 08.11.2019)

¹²C-2019/06/665 (site: https://www.cci.gov.in/sites/default/files/Notice_order_document/665Order.pdf, last accessed: 008.11.2019)

¹³C-2019/08/679 (site: https://www.cci.gov.in/sites/default/files/Notice_order_document/C-2019-08-6790.pdf, last accessed: 08.11.2019)

¹⁴C-2019/08/678 (site: https://www.cci.gov.in/sites/default/files/Notice_order_document/C-2019-08-6780.pdf, last accessed: 08.11.2019)

¹⁵C-2019/07/675 (site: https://www.cci.gov.in/sites/default/files/Notice_order_document/Order675.pdf, last accessed: 08.11.2019)

¹⁶C-2019/08/677 (site: https://www.cci.gov.in/sites/default/files/Notice_order_document/Order-677.pdf, last accessed: 08.11.2019)

Noida Office

8th Floor, V.J. Business
Tower, Plot No. A6, Sector
125, Noida, UP - 201301
T: +91-120.4633900

New Delhi Office

#10, 1st Floor,
Jor Bagh,
New Delhi - 110003
T: +91.11.40244360

Mumbai Office

#134/A, Mittal Towers,
210 Nariman Point,
Mumbai - 400021
T: +91-22-68605151

Contact

E: info@saikrishnaassociates.com
E: complaw@saikrishnaassociates.com