

## CLARIFICATIONS SOUGHT

---

**NOTE:** Only the Clarifications which have been deemed to warrant a response have been furnished. All of the Clarifications sought have hence, not been responded to.

- 1) How should the parties in the moot proposition should be addressed?

*The Companies are to be referred as **Appellants** and the Competition Commission of India to be referred as **Respondent**.*

- 2) Could we be provided with a specific date/month etc when the term sheet was signed between Alpha and Gamma to understand the timeline within the Statement of Facts?

*1 April 2024.*

- 3) Does the term "anti-competitive agreement" as contained within Issue 1 consider a specific alleged agreement with respect to coordinated actions against Kappa, or considers an alleged coordinated agreement that existed since before Kappa made an attempt to enter the market, or encapsulates both agreements?

*No clarification is required in this regard.*

- 4) Was there a notification made to the CCI within this period that provides for an analysis of the rules on gun-jumping?

*No clarification is required in this regard.*

- 5) What are the assets and turnover of Alpha & Gamma?

*No clarification is required in this regard.*

- 6) What is the market share of each of the 5 companies?

*Approximate market shares are – (i) Alpha – 20%, (ii) Beta – 8%, (iii) Gamma – 10%, (iv) Delta – 3%, and (v) Epsilon – 7%, for the financial year 2023-24 and 2024-25 (year to date).*

- 7) Point number 13 of the proposition mentions "Alpha and Gamma were in talks of Alpha acquiring Gamma..." and then Point number 14 mentions "...due diligence process of the proposed transaction (i.e., acquisition of Alpha by Gamma). So, who is acquiring whom? Should it not be "(i.e., acquisition of Gamma by Alpha)"?

*Alpha is acquiring Gamma.*

- 8) The proposition provides that the Competition Appellate Tribunal (COMPAT) is the Appellate Tribunal in the case. However, the COMPAT has ceased to exist since 2017 and presently, the NCLAT handles appeals under the Competition Act. Kindly clarify if the Appellate Tribunal should be presumed to be COMPAT or NCLAT.

*No clarification is required in this regard.*

- 9) There appears to be an inconsistency in the proposition. In paragraph 13, third line, it is stated that “Alpha acquiring Gamma,” whereas in paragraph 14, last line, it mentions “i.e., acquisition of Alpha by Gamma.” Could the committee clarify which company is acquiring the other?

*Answered above.*

- 10) Could the committee clarify whether Alpha and Gamma notified the Competition Commission of India (CCI) about the proposed combination? If not, were they exempt due to the threshold requirement?

*Please assume that the acquisition of Gamma by Alpha is notifiable but has not been notified yet.*

- 11) Could the committee provide information on the relative positions of the companies involved in the industry, specifically in terms of their market presence & share?

*No clarification is required in this regard.*

- 12) Could the committee provide information on the annual turnover or financial performance of Alpha, Beta, Gamma, Delta, and Epsilon?

*No clarification is required in this regard.*

- 13) Could the committee provide details on when Alpha, Beta, Gamma, Delta, and Epsilon were incorporated?

*No clarification is required in this regard.*

- 14) Annexure II mentions that the prices determined are a result of collaborative efforts including the Government of Inca. In what capacity is the Government of Inca involved in these efforts aimed at determining prices?

*No clarification is required in this regard.*

- 15) Para 16 mentions that the pricing decisions were independently justified by cost of inputs and market conditions. What are these prevailing market conditions and cost of inputs?

*No clarification is required in this regard.*

**16)** What is the relationship between the southern state of Desto and the five companies?

*No clarification is required in this regard.*

**17)** Is the term sheet referred in paragraph 13 a binding document?

*Yes – it was a binding term sheet.*

**18)** Was the CCI notified about Alpha's acquisition of Gamma?

***Answered above.***

**19)** In Issue 3, are we to assume that the exchange of information has occurred, or that it is only at the stage of proposal?

*No clarification is required in this regard.*

**20)** What are the market shares of each of the 5 companies in the Frozen meat and cold cuts market?

***Answered above.***

**21)** Whether INCA's competition law appellate tribunal is pari-materia to the NCLAT?

*No clarification is required in this regard.*

**22)** Were the digital materials seized by the DG authenticated?

*Yes.*

**23)** What is the value of the proposed merger between Alpha and Gamma?

*INR 3,500 crores.*

**24)** Does the transaction/acquisition between the 2 companies i.e. Alpha and Gamma exceed the threshold level and is it a notifiable transaction to the CCI?

***Answered above.***

**25)** Whether the companies provide services all across the country's market or they have limited their scope of business to their respective regions in the country?

*All across the country.*

**26)** How much market share do all the 5 parties hold in the frozen meat market?

*Answered above.*

**27)** Does Kappa's market share i.e. 40% make it the largest player in the FMGC market?

*Yes.*

**28)** Since what date did the head of Alpha have access to the data of Gamma's profit margin data and cost structures ?

*No clarification is required in this regard.*

**29)** How was the data for the North Zone plan collected? Was it publicly available?

*No, the data was not available in public domain.*

**30)** Post-acquisition, would Gamma be merged into Alpha, or would it continue to exist as an independent entity?

*No clarification is required in this regard.*

**31)** What are the market shares of the companies?

*Answered above.*

**32)** Could you clarify the specifics of the acquisition mentioned? Specifically, we would like to confirm whether Alpha is acquiring Gamma or vice versa.

*Answered above.*

**33)** Additionally, considering the legal concept of "combination," which involves mergers or acquisitions by large companies, could you provide details on the combined financial thresholds or market share held by both entities?

*No clarification is required in this regard.*

**34)** Are the annexures admissible in totality, or can their validity be contested?

*The validity / authenticity of the annexures are not to be argued.*

**35)** What specific financial metrics were shared under the term sheet? While, the email only suggests that Alpha's Head requested Gamma to share the information, however, no such sharing of information is attached, to further prove or disprove any claims?

*No clarification is required in this regard.*

**36)** What was the total value of the acquisition of Alpha and Gamma?

*Answered above.*

**37)** What is the market share of the five companies?

*Answered above.*

**38)** Do the combined assets or turnover of Alpha and Gamma meet the thresholds of assets exceeding INR 1,000 crores or turnover exceeding INR 3,000 crores in India / Inca, or globally, assets exceeding USD 500 million with at least INR 500 crores in India / Inca or turnover exceeding USD 1,500 million with at least INR 1,500 crores in India / Inca?

*Answered above.*

**39)** Was an application made to the Chief Metropolitan Judge before the surprise check?

*Yes - the complete process in relation to the raid was followed and was in accordance with law.*

**40)** Was a percentage of fine deposited before the appeal was filled?

*Yes, 25% of the penalty amount has been deposited.*

**41)** Is the appellate tribunal NCLAT?(it is referred as Competition Appellate Tribunal (CAT) in the prop.)

*No clarification is required in this regard.*

**42)** What are the policies of government in the meat manufacturing sector? is it a binding related to pricing, if any?

*There is no government policy / regulation in relation to pricing in this sector.*

**43)** Are the long-standing retailer(s) of the five companies a single entity or group of companies related to each other? If not so, do each of the companies have exclusivity agreements with their respective retailers?

*No clarification is required in this regard.*

44) What are the assets and turnover of Alpha and Gamma?

*Answered above.*

45) Has the merger between Alpha and Gamma been concluded?

*No, the merger has not closed.*

46) What is the market share of each of the five companies?

*Answered above.*

47) Is Alpha acquiring Gamma or Gamma acquiring Alpha?

*Answered above.*

48) Was CCI's approval needed for the collaboration between Alpha and Gamma? Was the CCI's approval needed for the potential acquisition taking place?

*Answered above.*

49) Since the turnover of the companies is not specified, can we presume in positive for the purpose of application of section 5.

*Answered above.*

50) Are the companies to be Appellant 1, Appellant 2 and so on, respectively, or are they to come together under the umbrella term of 'Appellant'?

*(i) Alpha – Appellant 1, (ii) Beta – Appellant 2, (iii) Gamma – Appellant 3, (iv) Delta – Appellant 4, and (v) Epsilon – Appellant 5 (collectively referred to as “Appellants”)*

51) What are the financial records of the companies? And are there any relevant whatsapp messages?

*No clarification is required in this regard.*

52) In para 14 last line "acquisition of Alpha by Gamma" is incorrect, i think. Clarify it.

*Answered above.*

53) Is there any stats relating to market share of the companies?

*Answered above.*

**54)** Will the acquisition of Gamma by Alpha come under the threshold of a Combination?

*No clarification is required in this regard.*

**55)** Was Annexure 2 found only in Delta's warehouse, or was it found in the warehouses of all the Companies?

*No clarification is required in this regard.*

**56)** Did Alpha have access to Gamma's profit margins and cost structure due to the termsheet, or was it in a different document?

*The term sheet does not specifically mention profit margins and cost structure.*

**57)** Was the order passed under S. 27 only with respect to the allegations of price alignment, or was it also with respect to the acquisition of Gamma by Alpha?

*No clarification is required in this regard.*

**58)** What are the market shares of the Companies?

*Answered above.*

**59)** Is Alpha acquiring Gamma or is it the opposite? (contradiction between paragraph 13 and 14 of the moot proposition)

*Answered above.*

**60)** What are the market shares of each of the 5 companies?

*Answered above.*

**61)** What is the valuation of the deal between Alpha and Gamma (what would their prospective shareholding be?).

*Answered above.*

**62)** Kindly share a financial breakdown of the companies - their turnover, assets (domestic and international), etc.

*Answered above.*

**63)** Post combination, will Gamma be a subsidiary of Alpha or would they be merged into one company?

*No further clarification is required in this regard.*

**64)** Can you please elaborate on what the government policies entail and does it include clearly mentioned price caps on the meat products?

*There is no government policy / regulation in relation to pricing in this sector.*

**65)** Does the geographical location of the companies cause a significant difference in the cost of the meat product?

*No.*

**66)** Can you elaborate on the government's role in processing meat and whether these companies source their raw material from the government itself?

*They do not source it from the government, Incan government has schemes for animal husbandry promotion at grass-root levels.*

**67)** Were the other companies aware about the North Zone plan and did they contribute to it's formation?

*No clarification is required in this regard.*

**68)** Can you please elaborate on what "preserve the valuation of Gamma" means in 13(b)?

*No clarification is required in this regard.*

**69)** What factors have driven the projected price increases across companies, and are there external market influences contributing to these changes?

*No clarification is required in this regard.*

**70)** Did any company, particularly Alpha or Gamma, initiate price hikes independently, or were the increases coordinated or implemented simultaneously across the industry?

*No clarification is required in this regard.*

**71)** Are there any formal or informal agreements, communications (e.g., emails, meetings, forums), or collaborations between companies regarding pricing strategies, market division, or future projections?



*No clarification is required in this regard.*

- 72)** What has been the market share of each company over the past three financial years, and have there been significant shifts following Alpha's acquisition of Gamma? Did the acquisition result in strategic alignments or pricing directives affecting market-wide trends?

*Answered above.*

- 73)** How do the cost structures of each product category across the companies compare, and do they justify the uniform price increases? Are there internal documented pricing policies indicating independent or market-influenced decisions?

*No clarification is required in this regard.*

- 74)** What was the market share of each of the 5 companies in this sector?

*Answered above.*

- 75)** Were there any other VIABLE alternatives for Kappa to procure frozen meat products from?

*No clarification is required in this regard.*

- 76)** Did the DG have a warrant to substantiate the dawn raid and the subsequent collection of data?

*Yes - the complete process in relation to the raid was followed and was in accordance with law.*

- 77)** Is the CAT pari materia to India's NCLAT considering how the CAT has been abolished in India and all appellate antitrust matters are heard by the NCLAT.

*No clarification is required in this regard.*

- 78)** What government policies and initiatives have been implemented to promote meat production and consumption? Were there any specific measures that could affect or regulate retail/wholesale prices?

*There is no government policy / regulation in relation to pricing in this sector. However, the Incan government has schemes for animal husbandry promotion at grass-root levels.*

- 79)** Did the acquisition of alpha over gamma received regulatory approval?

*No clarification is required in this regard.*

**80)** What other ways has the Incan government undertaken to reduce the nutritional deficit other than the investments, modern meat processing units, campaigns and conferences, and the ways to regulate the processing of meat ?

*No clarification is required in this regard.*

**81)** Was the data relating to pricing strategies and approaches, geographical allocation, etc., shared as part of the termsheet?

*The term sheet does not mention the specifics in relation to the pricing strategies, approaches and geographical allocation.*

**82)** Who all does the term 'key players' in Annexure II mean?

*No clarification is required in this regard.*

**83)** Since the laws of Inca are pari materia to India, can we assume that the market conditions of Inca are similar to India?

*No clarification is required in this regard.*

**84)** Was there a protocol or a clean team set up by alpha and gamma for the acquisition process?

*No clarification is required in this regard.*

**85)** What are the details of the term sheet between alpha and gamma, was there a confidentiality agreement of sorts?

*No clarification is required in this regard.*

**86)** What are the assets and turnover of Alpha and Gamma

*No clarification is required in this regard.*

**87)** Is alpha acquiring gamma or gamma acquiring alpha (there is contradiction in para 13 and 14)

*Answered above.*

**88)** Is the product distribution area of the companies limited to where their manufacturing units are?

*The products of the Companies are distributed all across the country.*

**89)** What is the location of Rockbridge with respect to Anzuk, Gotham, Zion and Desto?

*Rockbridge is also in the North-Inca region.*

**90)** It is given that the companies were 5 major manufacturers/ producers of frozen meat industry. So can we presume collectively their market share is more than 51% and it is showing oligopolistic tendencies.

*Answered above.*

**91)** What is the exact timeline when the term sheet was stamped as to be shredded.

*No clarification is required in this regard.*

**92)** Under what terms Gamma is getting accquired, whats it's incentive?

*No clarification is required in this regard.*

**93)** Anzuk, Gotham and Zion are situated in the largest states in INCA in which Delta, Epsilon , Gamma have their manufacturing units located right?

*No clarification is required in this regard.*

**94)** Whether companies meet the financial and market percentage threshold for taking permission from CCI for merger / acquisition ?

*No clarification is required in this regard.*

**95)** Are the distributors / retailers of all the companies the same since all have given the same line of reasoning for rejecting Kappa's offer ?

*No clarification is required in this regard.*

**96)** Did DG take permission from CMM before conducting the surprise raid on the companies?

*Yes - the complete process in relation to the raid was followed and was in accordance with law.*

**97)** Whether the Term sheet for acquisition has been signed by Alpha and Gamma or not?

*The term sheet has been executed on 1 April 2024.*

**98)** Whether the North Zone plan was curated by Delta unilaterally or with the consent of the other 4 companies as well ?

*No clarification is required in this regard.*

**99)** What are the contents of the WhatsApp conversation in the investigation of the DG?

*No clarification is required in this regard.*

**100)** What is the relationship between the companies and the retailers (excluding Kappa)?

*No clarification is required in this regard.*

**101)** What is the valuation of the merger and the companies (Alpha and Gamma) involved?

***Answered above.***

**102)** What do the government initiatives look like in the meat industry ?

*The Incan government has schemes for animal husbandry promotion at grass-root levels.*

**103)** Is there a Non-Disclosure Agreement (NDA) between Alpha and Gamma ?

*No clarification is required in this regard.*

**104)** Was there a protocol or a clean team set up by alpha and gamma for the acquisition process?

*No clarification is required in this regard.*

**105)** What are the details of the term sheet between alpha and gamma, was there a confidentiality agreement of sorts?

*No clarification is required in this regard.*

**106)** What are the assets and turnover of Alpha and Gamma

***Answered above.***

**107)** Is alpha acquiring gamma or gamma acquiring alpha (there is contradiction in para 13 and 14)

***Answered above.***

**108)** Is the product distribution area of the companies limited to where their manufacturing units are?

*No - the products of the Companies are distributed all across the country.*

**109)** Did alpha and gamma get CCI approval for the acquisition before sharing information with each other?

*Answered above.*

**110)** Has the government shared the northern zone plan with delta?

*No, the North Zone Plan (i.e., Annexure II) was not shared by the government.*

**111)** At what stage is the acquisition of Gamma by Alpha currently, whether it is closed, finalized, or scheduled for May 2025, and to what extent will Gamma's operations and product sales be integrated with Alpha's?

*The merger is not closed.*

**112)** Are there any manufacturers from the southern states producing frozen meat products, or do the five manufacturers operate and sell their products in all states of Inca?

*The products of the Companies are distributed all across the country.*

**113)** What is the value of the acquisition deal between Alpha and Gamma, and what is the relevant turnover of both companies?

*Answered above.*

**114)** What is the status of Gamma as an independent legal entity pre-acquisition, is it acting as a single economic entity pre-acquisition, or is it currently in a joint venture arrangement with Alpha till the acquisition gets completed?

*No clarification is required in this regard.*

**115)** Whether the schemes introduced by the Incan government are beneficial for all meat/frozen meat product manufactures and distributors along with being statutorily backed throughout the country?

*The Incan government has schemes for animal husbandry promotion at grass-root levels.*

**116)** Did Alpha and Gamma receive CCI approval for the acquisition?

*Answered above.*

**117)** Has the Incan government imposed any restrictions or guidelines in relation to determination of prices of meat and meat products?

*There is no government policy / regulation in relation to pricing in this sector. However, the Incan government has schemes for animal husbandry promotion at grass-root levels.*

- 118)** Was the information exchange referred in Annexure III completed between Alpha and Gamma?

*No clarification is required in this regard.*

- 119)** What steps did the DG take to ensure the confidentiality of the documents?

*The DG has complied with all the provisions under the Competition Act, 2002.*

- 120)** What was the turnover, value of assets, and individual market share of all the companies in the past 5 years?

*No clarification is required in this regard.*

- 121)** What all stakeholders, or companies, were involved in making the north zone plan?

***Answered above.***

- 122)** Is the cold cut frozen meat market of Republic of Inca pari materia to India's market?

*No clarification is required in this regard.*

- 123)** Was there a protocol or a clean team set up by alpha and gamma for the acquisition process?

*No clarification is required in this regard.*

- 124)** What are the details of the term sheet between alpha and gamma, was there a confidentiality agreement of sorts?

*No clarification is required in this regard.*

- 125)** What are the assets and turnover of Alpha and Gamma

***Answered above.***

- 126)** Is alpha acquiring gamma or gamma acquiring alpha (there is contradiction in para 13 and 14)

***Answered above.***

- 127)** Is the product distribution area of the companies limited to where their manufacturing units are?

*The products of the Companies are distributed all across the country.*

- 128)** In paragraph 8, pricing below retail level is mentioned. Is the retail level the prices being offered to existing retailers include the costs incurred by the companies for transportation and storage?

*No clarification is required in this regard.*

- 129)** Was the “Meat: Why don't you eat?” a closed-door conference or open to the public, to say that were discussions between Ms. Agrad and company executives held in private rooms or in common areas?

*No clarification is required in this regard.*

- 130)** Were any regulatory notifications made regarding the potential acquisition of Gamma by Alpha?

*No clarification is required in this regard.*

- 131)** About the phrase ‘complementary strengths’ in Navarro's email: Is this interpretive of efficiency gains or market division or geographical allocation (logistical/transport/storage advantages) mentioned elsewhere?

*No clarification is required in this regard.*

- 132)** Was the term sheet final and binding or draft?

*It was a binding term sheet.*

- 133)** What procedures have taken place in furtherance of the Acquisition, w.r.t. shareholders and any other interested parties?

*No clarification is required in this regard.*

- 134)** Is there an involvement of Official Liquidator and Registrar of Companies?

*No clarification is required in this regard.*

- 135)** There's a line in Annexure III that says "We believe that a closer collaboration could provide significant opportunities to enhance our positions as market leaders, both pre and post

transaction". What exactly is meant by the phrase 'pre and post transaction' - what practices were the 2 companies undertaking? Also were the 2 terms enlisted under the termsheet, due to be practised and followed strictly post the acquisition or were there any steps that were already being undertaken?

*No clarification is required in this regard.*

- 136)** Were the practices planned to be followed by the two companies in compliance with any government order, policy, or welfare scheme, and did they have any specific motive regarding the alignment or prices discussed in the term sheet? Additionally, what were the requirements or responsibilities placed on the meat companies as per government initiatives, and were these mandatory in any way?

*No clarification is required in this regard.*

- 137)** What is the profit margin for all the companies (apart from ALPHA, BETA, GAMMA, EPSILON and DELTA) and what is the cost of production of all the companies?

*No clarification is required in this regard.*

- 138)** what was the price at which the Meat companies were to sell their meats to Kappa, as per Kappa's proposal?

*No clarification is required in this regard.*

- 139)** Is the tribunal before which the present appeal arises the COMPAT as per Chapter VIII - A or the NCLAT and are the decisions of the CCI, NCLAT and the High courts binding on the present appellate tribunal (since the COMPAT is not functional, we do not have clarity on how this tribunal in the proposition operates)?

*No clarification is required in this regard.*

- 140)** Initial Meeting of Kappa with the 5 companies - Was it confidential in nature? or was the meeting public knowledge?

*No clarification is required in this regard.*

- 141)** Kappas plan to enter into frozen meats markets - Secret/Public knowledge?

*Publicly announced.*

- 142)** Was the meeting on 15th December privately held?



*The individual meetings between Ms. Agrad and the senior executives of the Companies, was held on the sidelines of the conference.*

**143)** Are there any players from Desto in the North - Inca Region?

*No clarification is required in this regard.*

**144)** How many major players are there in Desto?

*No clarification is required in this regard.*

**145)** Total no. of major players in Inca?

*No clarification is required in this regard.*

**146)** Has the Incan govt. have any pricing policies in place to regulate the frozen meats market?

*There is no government policy / regulation in relation to pricing in this sector.*

**147)** Is there a base price set for frozen products by the Incan Govt.?

*There is no government policy / regulation in relation to pricing in this sector.*

**148)** Is there a cap set on the pricing of products?

*There is no government policy / regulation in relation to pricing in this sector.*

**149)** Any Communication between the companies on 16th December, 2023?

*No clarification is required in this regard.*

**150)** Was the Incan Govt involved in the pricing of the North Zone Plan, dated 1st April, 2023?

*No clarification is required in this regard.*

**151)** Was there a significant difference between the price quoted by Kappa and that of other existing retailers and distribution networks of the companies?

*No clarification is required in this regard.*

**152)** What insights and analysis had been already shared by Gamma with Alpha as referenced in Annexure III? (“The insights and analysis you’ve shared so far has been instrumental”)

*No clarification is required in this regard.*

- 153)** Was there a specific mechanism for due diligence process between Alpha and Gamma? Who all from both companies were involved?

*No clarification is required in this regard.*

- 154)** Are the regulations (Merger Regulations issued in September 2024) also applicable to our case?

*No clarification is required in this regard.*

- 155)** In the current case should we follow General Regulations 2009 or the General Regulations 2024?

*No clarification is required in this regard.*

- 156)** Was there any NDA signed between Alpha and Gamma before starting the due diligence process?

*No clarification is required in this regard.*