Competition News Bulletin

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Inside...

I. CARTELS AND ANTI-COMPETITIVE AGREEMENTS

INDIA

Competition Commission of India imposes penalty of INR 10 Lakhs on CDAG

Competition Commission of India (CCI) by way of an order dated October 27, 2014 has found the Chemist and Druggists Association, Goa (CDAG) to be in continued contravention of Section 3(3) of the Competition Act, 2002 (Act). On June 11, 2012, CCI found CDAG to be in contravention of the Act and imposed a penalty of INR 2 Lakhs. In a subsequent Information filed by Xcel Healthcare, it was brought to the notice of CCI that CDAG was restraining pharmaceutical companies i.e. Glenmark Pharmaceuticals and Wockhardt Limited from doing business with non-authorized stockists and thereby not complying with the order of the CCI. CCI took suo-moto cognizance and ordered the Director General (DG) to investigate the matter. After a detailed investigation, CCI found that CDAG was indulging in anti-competitive practices in complete disregard to the CCI order dated June 11, 2012. CCI observed that CDAG was continuing to exercise control on the supply chain through which drugs and medicines are made available in the market through the practice of requirement of LOC/ NOC prior to appointment of stockists by pharmaceutical companies without having any legal or statutory authority in this respect. Further, CDAG forced pharmaceutical companies to follow its mandate by threatening the other stockists in Goa to stop taking supplies or suspend receiving supplies from them till such time they stopped supplies to the unauthorised stockists such as Xcel Healthcare. CCI found that Glenmark Pharmaceuticals and Wockhardt Limited has not violated any provisions of the Act.

(Source: CCI order dated October 27, 2014)

International

Brazil: LG and Samsung pay $19 million to settle LCD cartel case

On August 20, 2014, Brazil's Administrative Counsel for Economic Defense (CADE) announced that Samsung and LG had entered into cease and desist agreements related to their participation in liquid crystal display (TFT-LCD) cartel activity. The agreements required LG to pay $15 million and Samsung to pay about $3.9 million. Additionally, Samsung and LG had to confess their participation in the cartel activity, cease & desist and provide continuing cooperation to CADE.

(Source: CADE Press Release dated August 20, 2014)

China

NDRC fines three cement makers US$19 million

On September 9, 2014, China's National Development and Reform Commission (NDRC) announced that it had instructed the Jilin Province Price Bureau to impose fines totaling 114 million RMB (US$19 million) on three cement companies for unlawful price fixing under the Anti-Monopoly Law (AML): Jilin Yatai Group Cement Sales Co., Ltd (Yatai), North Cement Co., Ltd. (North) and Jidong Cement Jilin LLC (Jidong). The NDRC found that in April 2011, three companies met and agreed to coordinate pricing on cement products in areas of Northeast China. The investigation also found that in May 2011, North and Yatai struck price agreements on cement products in areas within Jilin province.

(Source: NDRC Press Release dated September 9, 2014)

NDRC fines Zhejiang Insurance Association and 22 Insurance Companies for price fixing

On September 2, 2014, China's NDRC published 23 administrative penalty decisions made at the end of 2013 against the Insurance Association of Zhejiang Province (Association) and 22 insurance companies doing business in the same province, for a total of more than 110 million RMB (US$18 million). The NDRC's investigation revealed that since 2009, the Association had arranged for 23 property insurance companies within Zhejiang province to reach and implement agreements on fixing commercial auto insurance rates and fixing and altering commercial auto insurance agency commissions, both of which violated the AML.

(Source: NDRC Press Release dated September 2, 2014)

Hubei Price Bureau fines FAW-Volkswagen and Audi Dealers for price fixing

On September 11, 2014, Hubei Price Bureau announced that it imposed a fine of 249 million RMB (US$40 million) on FAW-Volkswagen Sales Company Ltd. (FAW-Volkswagen) and a fine of 30 million RMB (US$5 million) on eight Hubei Audi dealers for unlawful price fixing under the AML. The investigation was initiated in March 2014 by the Hubei Price Bureau under the guidance of NDRC. It revealed that since 2012, FAW-Volkswagen had repeatedly arranged for 10 Audi dealers in Hubei to reach and implement monopolistic agreements on prices of whole vehicle sales, service and maintenance. The investigation also found FAW-Volkswagen had issued administrative documents and formed a work group to urge the dealers to follow its price-management measures.

(Source: NDRC Press Release dated September 11, 2014)

European Union:

EC settles cartel on bid-ask spreads charged on Swiss Franc interest rate derivatives

EC has found that four international banks, RBS, UBS, JP Morgan and Crédit Suisse, operated a cartel on bid-ask spreads of Swiss franc interest rate derivatives in the European Economic Area (EEA). The Commission imposed fines worth a total of € 32,355,000. RBS received immunity from fines for revealing the existence of the cartel to the Commission. UBS and JPMorgan received reductions of their respective fines for cooperating with the investigation under the Commission's 2006 Leniency Notice. All four banks received a 10% reduction for agreeing to settle the case with the Commission. The aim of the agreement was to lower the parties' own transaction costs and maintain liquidity between them whilst seeking to impose wider spreads on third parties. Another objective of the collusion was to prevent other market players from competing on the same terms as these four major players in the Swiss franc derivatives market.

(Source: European Commission: Press Release dated October 21, 2014)

EC settles RBS-JPMorgan cartel in derivatives based on Swiss franc LIBOR

EC has found that two international banks, RBS and JP Morgan, participated in an illegal bilateral cartel aimed at influencing the Swiss franc Libor benchmark interest rate between March 2008 and July 2009. Such collusion is prohibited by EU antitrust rules. The banks agreed to settle the case with the Commission under a simplified procedure. RBS received immunity from fines for revealing the existence of the cartel to the Commission. JPMorgan was fined € 61,676,000 after benefitting from a reduction of its fine for its cooperation with the investigation under the Commission's 2006 Leniency Notice, as well as a 10% reduction for agreeing to settle the case with the Commission. Between March 2008 and July 2009 RBS and JP Morgan tried to distort the normal course of the pricing of interest rate derivatives denominated in Swiss franc. They discussed the future Swiss Franc Libor rate submissions of one of the banks and at times exchanged information concerning trading positions and intended prices.

(Source: European Commission: Press Release dated October 21, 2014)

EC fines smart card chips producers € 138 million for cartel

EC has found that Infineon, Philips, Samsung and Renesas (at the time a joint venture of Hitachi and Mitsubishi) coordinated their market behaviour for smart card chips in the EEA. The Commission has imposed fines totalling € 138,08,000. The companies colluded through bilateral contacts that took place in the period between September

2003 and September 2005. Renesas benefitted from full immunity under the EU Commission's Leniency Notice for revealing the existence of the cartel to the Commission.

(Source: European Commission: Press Release dated September 3, 2014)

Germany: Bundeskartellamt fines 14 companies and 17 individuals for price fixing

The Bundeskartellamt has concluded its investigations in the cartel proceedings against manufacturers of concrete paving stones and imposed further fines on 14 companies and 17 individuals involved on account of price-fixing agreements. The fines amount in total to approx. 6.2 million euros. The proceedings concern agreements on prices for concrete paving stones in the market region of North Rhine-Westphalia and the bordering districts of neighboring federal states during the period from the end of 2006 (in part from the end of 2007) to early 2010. The authority had already imposed fines of approx. 2.3 million euros in 2012 on account of price-fixing agreements applying to other market regions. These were imposed on another six companies and individuals involved. In total, the fines imposed in the overall "concrete paving stone" proceedings thus amount to at least 8.5 million euros.

(Source: Bundeskartellamt Press Release dated September 11, 2014)

Hungary: Hungarian Competition Authority fines newspaper cartel


NÉPSZABADSÁG

Ortodox temetés Jelcinnek

The Hungarian Competition Authority (HCA) established that Axel Springer Magyarország Kft., Russmedia Kft., Lapcom Kiadó Kft. and Pannon Lapok had entered into competition restrictive agreements aimed at preventing direct entry into each other's geographical area. The HCA imposed a total fine of 2.2 billion HUF (approximately 7.3 million Euro) for the infringement. It noticed that the contracts entered into by the above-mentioned undertakings that were legally valid from 2000 (lasting from November 2000 and from May 2002 to April 2010) (or their legal predecessors) concerning Sunday papers contained mutual non-compete clauses and price fixing clauses.

(Source: HCA Press Release dated 20 October 2014)

United Kingdom: OFT On-line Hotel Booking commitments struck down by UK Court

On September 26, 2014, the Competition Appeal Tribunal (CAT) quashed the decision of the Office of Fair Trading (OFT, now the Competition and Markets Authority, CMA) in the online hotel booking case The CAT found that the OFT did not properly consider concerns raised by a provider of a price comparison website, Skyscanner, and two other stakeholders in relation to the commitments accepted by the OFT in its contested decision. The commitments provided that specific discount information on hotel rooms would be disclosed only to members of so-called closed groups consisting mainly of customers who had actively opted in to become a member of a group and made a previous booking at the headline rate. Skyscanner raised concerns that the restriction on disclosure of specific price information outside the 'closed groups' could have a negative effect on inter-brand competition as customers would be unable to use price-comparison sites to compare the actual room prices and discounts offered by different hotels.

(Source: CAT Press Release dated September 26, 2014)

II. ABUSE OF DOMINANCE/MARKET POWER

India

CCI penalizes Super Cassettes for market abuse

CCI by way of an order dated October 1, 2014 has imposed a penalty of INR 2.83 crores (8% of the average turnover) on Super Cassettes Industries Limited (SCIL), popularly known as "T-Series", for abusing dominant position in the market of licensing of Bollywood music to private FM radio stations for broadcast in India. The information was filed by HT Media Limited (HT) alleging that SCIL was abusing their dominant position in the market by charging excessive licensing fees and making it mandatory to sign a contract for minimum commitment charges (MCC) per radio station regardless of whether their songs were played or not. Following a detailed investigation by DG, CCI concluded the relevant market in the present case would be the market for licensing of Bollywood music to private FM radio stations for broadcast in India. On the issue of dominance, CCI observed that the market share of SCIL amounts to 50% with regard to revenue when compared to the other players like Yash Raj Films, Sony, SaReGaMa and even copyright societies like PPL. Further, approximately 25 to 60 % of the songs played on the radio were licensed from SCIL. With regard to the size and resource, SCIL turnover was over INR 400 crores which was 4 times that of its competitors. On the issue of abuse, CCI held that MCC is exploitative and exclusionary in nature. It is exploitative as it forces the customers to pay for music that it may not play. Further, imposition of MCC by the SCIL has an anti-competitive effect on the market as it forecloses other competitors from a substantial share of the market. Since the private radio station is contractually bound to pay the opposite party a minimum guarantee, they are likely to broadcast the amount of music that they have already paid for. CCI holds that the imposition of MCC on private FM radio stations is an abuse by the opposite party as an unfair price condition under Section 4(2) (a) (i) of the

Act. Apart from penalty, CCI issued a cease and desist order and directed SCIL to modify the unfair condition of MCC imposed on private FM Stations in the agreements within 3 months.

(Source: CCI order dated October 1, 2014)

CCI directs Coal India to cease & desist from unfair practices

On October 27, 2014, CCI issued two separate orders against Coal India Limited (CIL) and its subsidiaries for abusing their dominant position. The final orders were passed on the information's filed by Mr. Bijay Poddar (BP) and M/s Sai Wardha Power Company Ltd (SWPC). In BP case, CCI found the stipulations provided in Clause 9.2 of Spot e-Auction Scheme 2007 in violation of Section 4(2) (a) (i) of the Act whereby a buyer is saddled with penalty by way of forfeiture of Earnest Money Deposit (EMD) for non-lifting of coal after successful participation in the e-Auction without any corresponding liability upon CIL and its subsidiaries for failure to deliver coal in respect of accepted bids. Such arrangement in the Scheme was noted to be a result of market power exercised by CIL and its subsidiaries. In SWPC case, CCI held that CIL and its subsidiaries operate independently of market forces and enjoy undisputed dominance in the relevant market of "production and supply of non- coking coal to the thermal power producers in India" and imposed unfair conditions in Fuel Supply Agreements (FSAs) with the power producers for supply of non-coking coal. In both the cases, CCI orders CIL to cease and desist from the unfair practices and directed to modify the unfair terms and conditions. On December 09, 2013, CCI imposed a penalty of INR 1773.05 crores (3% of average turnover) on CIL for abusing its dominant position.

(Source: CCI order dated October 27, 2014)

International

European Union: Deutsche Telekom fined for 'margin squeeze' tactics in Slovakia

EC has imposed a fine of € 38,838,000 on Slovak Telekom a.s. and its parent company, Deutsche Telekom AG, for having pursued during more than five years an abusive strategy to shut out competitors from the Slovak market for broadband services, in breach of EU antitrust rules. In particular, the Commission concluded that Slovak Telekom refused to supply unbundled access to its local loops to competitors, and imposed a margin squeeze on alternative operators. Deutsche Telekom as parent company with decisive influence is also responsible for the conduct of its subsidiary; it is therefore jointly and severally liable for Slovak Telekom's fine. Deutsche Telekom also received an additional fine of € 31,070,000 to ensure sufficient deterrence as well as to sanction its repeated abusive behaviour (recidivism) as it had already been fined in 2003 for a margin squeeze in broadband markets in Germany.

(Source: European Commission: Press Release dated October 15, 2014)

III. MISCELLANEOUS NEWS

International

European Union: Margrethe Vestager confirmed by European Parliament as new competition commissioner

On September 10, 2014, the EC President-elect Jean-Claude Juncker nominated Margrethe Vestager, former deputy prime minister of Denmark, for the position of new EU Competition Commissioner. Vestager will succeed Joaquín Almunia when his term ends on October 31, 2014. On October 2, 2014, Vestager faced a confirmation hearing in the European Parliament and answered questions on the ongoing Google investigation, the impact of competition fines on small and medium-sized enterprises and how competition policy can keep up with technological developments. On October 22, 2014, the European Parliament approved the appointment of Vestager. She will take office on November 1, 2014.

(Source: The Reuters dated October 22, 2014)

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