

Competition News Bulletin



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I. CARTELS AND ANTI-COMPETITIVE AGREEMENTS

INDIA

CCI penalizes 14 major Car Companies a penalty of ₹ 2544.64 Crores



The CCI by way of order dated August 25, 2014 in Shri Shamsheer Kataria Vs Honda SIEL Cars India Ltd. & Ors. has imposed a total penalty of INR 2,544.65 crore @ 2% of total turnover in India on the 14 major car manufacturers for violating the Section 3 and Section 4 of the Act. Shri Shamsheer Kataria (“informant”) had filed an information

with the CCI alleging anti-competitive conduct by 3 Car Companies, namely Honda SIEL Cars India Ltd (“Honda”), the Volkswagen India Pvt. Ltd (“Volkswagen”) and Fiat India Automobiles Ltd (“Fiat”), in not allowing sale of the spare parts in the open market and restricting the after sales market for repairs and maintenance of their cars to the detriment of consumers and independent repairers. However, in view of prevalence of anti-competitive issues throughout the automobile industry, the CCI directed the Director General (DG) to include other car companies also under the investigation.

Facts of the Case -The informant has alleged that the 3 car companies named above are indulging in anti-competitive practices by:

- a) Not making available the genuine spare parts of automobiles freely in the open market manufactured by them.
- b) Controlling and regulating the operations of various authorized workshops and service stations which are in the business of selling automobile spare parts, besides, rendering after sale automobile maintenance services.
- c) Not making freely available the technological information, diagnostic tools and software programs required to maintain service and repair the technologically advanced automobiles manufactured by them to the independent repair workshops. The repair, maintenance and servicing of such automobiles could only be carried out at the workshops or service stations of the authorized dealers of these car companies.
- d) By placing restriction on the availability of genuine spare parts and the technical information/ know-how required to effectively repair, maintain or service the automobiles manufactured by them. The said car companies and their respective dealers, as a matter of policy, refuse to supply genuine spare parts and technological equipment for providing maintenance and repair services in the open market and in the hands of the independent repairers.

Investigation by DG- DG conducted detailed investigation by seeking the information from various

Original Equipment Suppliers (“OES”), authorize dealers, multi brand service providers, independent repairers, SPX India Limited and various other auto industry associations and came to the conclusion that 14 car makers (OP’s) contravened Section 3(4) and Section 4.

Issues and finding CCI -

Issue 1: Whether the Opposite Parties have violated the provisions of section 4 of the Act?

- a) CCI observed that it is in the aftermarket of spare parts, diagnostic tools and technical manuals and not the primary market of sale of cars where the alleged dominance of the OEM’s. Since a consumer of a particular model of car manufactured by an OEM cannot switch to the spare parts manufactured by another OEM. Further, the purchaser of a product in the primary market is to a great extent locked in with the primary product and the feasibility of switching to another primary product to avoid a price increase in the secondary market of spare parts or repair services is greatly limited.
- b) In view of the forgoing and after detailed analysis, CCI, concluded that each OEM is a 100% dominant entity in the aftermarket for its genuine spare parts and diagnostic tools and correspondingly in the aftermarket for the repair services its brand of automobiles, since the customer gets “locked-in” after buying a car of a particular brand . Each OEM has a clear competitive advantage in the aftermarket for sale of spare parts/ diagnostic tools and repair services for their respective brand of automobiles. Due to the technical compatibility between the products in the primary market and the secondary market, each OEM is shielded from any competitive constrains in the aftermarket from their competitors in the primary market. Further, the OEMs have ensured that the independent repairers are not able to effectively compete with the authorized dealers of the OEMs in the secondary market for repairs and services by denying them access to required spare parts and tools to complete such repair work. Therefore, each OEM has abused its dominant position by indulging in anti-competitive practices resulting in contravention of Section 4(2)(a)(i), 4(2)(a)(ii), 4(2)(c) and 4(2)(e) of the Act.

Issue 2: Whether the Opposite Parties have violated the provisions of section 3 of the Act?

- a) CCI analyzed the structure of the Indian automobile repairs market and found that car makers, by routinely restricting independent repairers/ garage owners from accessing their own brand of spare parts and repair tools, ensure that their authorized dealer network is the only available service option for their customers. Such foreclosure of competition in the repairs market allows each car maker to exploit its monopoly market power by charging exploitative high prices for spare parts and ancillary repair services (with a mark-up as high as 40 times).
- b) The CCI also found that while car prices are being progressively reduced, car makers are cunningly recouping these lower margins by exorbitantly pricing spare parts and repair services.
- c) Ensuing detailed investigation, CCI found that the conduct of the Car Companies was in violation of

the provisions of section 3(4) of the Act with respect to its agreements with local Original Equipment Suppliers and agreements with authorized dealers whereby it imposed absolute restrictive covenants and completely foreclosed the aftermarket for supply of spare parts and other diagnostic tools.

- d) CCI concluded that since most of clauses in agreements requiring authorized dealers to source spare parts only from OEMs or their approved vendors is anti-competitive in nature and by restricting access of independent repairers to spare parts and diagnostic tools and by denying the independent repairers access to repair manuals, the agreements entered into between OEMs and authorized dealers have violated Section 3(4)(b), 3(4)(c) & (d) of the Act.

Final Order- CCI observed that OP's have contravened the provisions of sections 3(4)(b), 3(4)(c), 3(4)(d), 4(2)(a)(i) and (ii), 4(2)(c) and 4(2)(e) of the Act and did not accept the concept of " unified system markets" in the context of Indian market conditions. Therefore, besides imposing the penalty, in order to provide corrective measures to make the automobile market more competitive and to put an end to the present anti-competitive conduct of the car companies, CCI directed the OP's to comply with the following directions:

- i) To immediately cease and desist from indulging in conduct which has been found to be in contravention of the provisions of the Act.
- ii) To put in place an effective system to make the spare parts and diagnostic tools easily available through an efficient network.
- iii) To allow OESs to sell spare parts in the open market without any restriction, including on prices.
- iv) Not to place any restrictions or impediments on the operation of independent repairers/garages.
- v) OPs may develop and operate appropriate systems for training of independent repairer/garages, and also facilitate easy availability of diagnostic tools.
- vi) The OPs may also work for standardization of an increasing number of parts in such a manner that they can be used across different brands, like tyres, batteries etc. at present, which would result in reduction of prices and also give more choice to consumers as well as repairers/service providers.
- vii) Not to impose a blanket condition regarding cancellation of warranties if the consumer avails of services of any independent repairer.
- viii) To make available in public domain, information regarding the spare parts, their MRPs, arrangements for availability over the counter, and details of matching quality alternatives, maintenance costs, provisions regarding and any such other information which may be relevant for full exercise of

consumer choice and facilitate fair competition in the market.

These correction remedies will (i) enable the consumers to have access to spare parts and to have freedom of choice between independent repairers and authorized dealers and (ii) to enable the independent repairers to participate in the aftermarket and provide services in a competitive manner. Further, CCI has also recommended that the government may bring out an appropriate regulatory framework for the Indian auto parts industry, on the lines of those in the developed economies of the EU and the US.

High Court of Delhi has stayed a penalty of ₹ 471.14 crore imposed on Maruti Suzuki India Ltd, on September 3, 2014, observing that the order of the CCI will not take effect until the Madras High Court disposes of a petition filed before it by Hyundai Motor India Ltd, which has obtained a stay on the order.

Comment: *This is a landmark decision passed by CCI, as this is for the first time wherein, CCI has held each car company as dominant in its respective after sales market and penalized the major car companies for entering into vertical agreements and for abusing their dominance. The Compliance of this order is a challenging task for the automobile industry. Further, Competition law authorities around the world have been increasingly aggressive against the anti-competitive practices of car companies. Last month, China also penalized 10 Japanese auto parts firms more than \$200 million, its biggest-ever penalty, for violating the country's anti-monopoly law.*

CCI investigates paper makers for cartelization

CCI has initiated an investigation against ITC Bhadrachalam Paper Board, Andhra Paper Mills of International Paper, Singhania Group-promoted JK Paper Mills, West Coast Paper Mills, Ballarpur Industries, Indian Paper Manufacturers Association and several others for forming cartel by increase prices simultaneously. The complaint was filed by Sivakasi Master Printers Association. To substantiate the allegations, the complainant submitted various circulars issued by paper mills intimating a rise in the prices of paper and mails exchanged between some paper mills. CCI has directed the Office of Director General to investigate the matter.

(Source: The Economic Times dated August 29, 2014)

Tyre companies again under CCI scanner

On information filed by All India Tyre Dealers' Federation (AITDF) for alleged cartelization in tyre industry, the CCI after forming the prima facie opinion referred the matter for DG Investigation. AITDF alleged that Apollo Tyres, MRF, Ceat, JK Tyres and Birla Tyres under the guise of ATMA is engaged in 'price parallelism' in the profitable replacement market. It is also alleged that the tyre makers were consistent in increasing product prices to counter any sharp rise in the costs of natural rubber, but a decline in prices of raw material does not lead to a corresponding cut in tyre



prices.

(Source: The Business Line dated August 24, 2014)

International

Brazil: CADE fines cartel in the market of generic medicines in BRL 4.2 million

The Administrative Council for Economic Defense (CADE) condemned the pharmaceutical company Merck's to pay fine of BRL 4.2 million for cartel formation to prevent the sale of generic drugs. Merck united with the larger pharmaceutical laboratories aiming at preventing distributors of medicines to work with generic medicinal products. CADE held that the agreement between competing labs could hamper the entrance of generic medicines in Brazil, harming the market and the consumers.



(Source: CADE Press Release dated August 6, 2014)

China: NDRC levies record fine on Japanese car part firms for price fixing

China's National Development and Reform Commission (NDRC) has levied a record fine totaling 1.24 billion yuan (£121 million) on twelve Japanese car parts companies including Sumitomo, Mitsubishi and Denso for their involvement in an alleged price-fixing scheme. NDRC held that these companies planned and executed a scheme to reduce competition in order to fix the prices of parts for more than 20 automakers, including Honda, Toyota and Ford. Hitachi's fine was waived because it first reported the collusion, according to the NDRC.



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

Germany: First fine imposed for resale price maintenance in mattress case

The Bundeskartellamt has fined Recticel Schlafkomfort GmbH 8.2 million euros on account of imposing resale price maintenance on retailers selling its products. From July 2005 to December 2009, representatives of Recticel agreed with its retailers that they should not offer certain strategic "Schlaraffia" products below the sales prices set by the manufacturer.



(Source: Bundeskartellamt: Press Release dated August 22, 2014)

Hungary: Cathode ray tubes makers fined for cartelization

Hungarian Competition Authority (GVH) has fined Samsung, LG Philips Displays Holding B.V. and



Technicolor SA for price fixing. The companies directly and indirectly fixed the prices of color television tubes, shared buyers and markets, limited capacities and shared non-public strategic information relating to prices, production and sales. GVH imposed a fine of 303,000,000 HUF (1,000,000 EUR). The proceeding was initiated by the GVH in 2008 as a result of a leniency application, in order to investigate the alleged cartel, operating between January 1997 - April 2004, among producers of TV and computer monitor tubes.

(Source: Hungarian Competition Authority: Press Release dated August 4, 2014)

United States: NGK agrees to plead guilty on cartelization charges on automobile parts

On August 19, 2014, NGK Spark Plug, an automotive parts manufacturer based in Nagoya, Japan, has agreed to plead guilty and to pay a \$52.1 million criminal fine for its role in a conspiracy to fix prices and rig bids for spark plugs, standard oxygen sensors, and air fuel ratio sensors installed in cars sold to automobile manufacturers in the United States and elsewhere. NGK engaged in a conspiracy to rig bids for, and to fix, stabilize and maintain the prices of, spark plugs, standard oxygen sensors and air fuel ratio sensors installed in cars sold to automobile manufacturers such as DaimlerChrysler AG, Honda Motor Co. Ltd. and Toyota Motor Corp., among others.

(Source: DOJ Press Release dated August 19, 2014)

II. ABUSE OF DOMINANCE/MARKET POWER

India

COMPAT upholds CCI order against National Stock Exchange



COMPAT by way of an order dated August 05, 2014 has dismissed the National Stock Exchange (NSE) appeal and upheld the order passed by CCI in respect of zero pricing carried out by NSE in its CD Segment between October 2008 and August 2011. By its order, the COMPAT upheld CCI's finding that NSE contravened Section 4 of the Act on account of zero pricing in CD Segment. The order clarifies the definition of "relevant market" for the purpose of the case as the entire 'stock exchange services market in India' as argued by MCX-SX. The directions issued by CCI has been upheld, including the penalty of INR 55.5 crore along with interest. In addition to this, NSE has been asked to cease and desist from predatory pricing and scuttling competition. The CCI direction to NSE to maintain separate accounts for CD Segment has not been continued as the same was not necessary in view of revised definition of relevant market. The COMPAT order also reaffirms the position that dominant undertakings have a special responsibility not

to distort competition in the sectors where they operate through their actions. In November 2009, MCX-SX filed a complaint in CCI against NSE for using its dominant position to engage in predatory pricing in the currency derivatives segment.

(Source: COMPAT Order dated August 5, 2014)

COMPAT stays CCI order on Adani Gas penalty



COMPAT has stayed order passed by CCI against Adani Gas wherein, it imposed the penalty of INR 25 crore and direction for modification of the agreement, for abusing its dominant position by imposing unfair terms & conditions in supply and distribution of natural gas in Faridabad to the members of Faridabad Industries Association (FIA).

COMPAT directed CCI not to take any coercive steps against Adani Gas till further orders.

(Source: The Times of India dated August 30, 2014)

CCI orders investigation against MSEDCL for market abuse

Pursuant to an information filed by Vidharbha Industries Association (VIA), CCI has directed DG to conduct an investigation into alleged abuse of dominant position by Maharashtra State Electricity Distribution Co. Ltd (MSEDCL). CCI observed that the MSEDCL purchased power from Maharashtra State Power Generation at rates which are comparatively higher than the rates offered by other entities which translated to a higher tariff for the end consumer and has denied 'open access' to consumers thereby restricting competition in the distribution market.



(Source: CCI order dated August 5, 2014)

International

Slovenian: Slovenian Competition Protection Agency fines the media company PRO PLUS for market abuse



Slovenian Competition Protection Agency (CPA) has imposed a fine of nearly 5 million EUR for abuse of dominant position on company PRO PLUS, a leading broadcasting and internet Media Company in Slovenia. The fine is the highest ever imposed for breaking competition rules in Slovenia. On 24 April 2013, CPA issued a decision finding PRO PLUS has abused its dominant position on the market for television advertising airtime on the territory of the Republic of

Slovenia as well as on Internal Market by concluding exclusive dealing arrangements with advertisers and granting conditional rebates with loyalty – inducing effects and in particular with:

- requiring individual advertisers to devote their entire advertising budget exclusively to PRO PLUS;
- granting a high level of discount as a reward for exclusivity and therefore exclude competitors from the advertising market or prevent them access to the market and prevent their development accordingly.

(Source: CPA Press Release dated August 26, 2014)

III. COMBINATIONS

India

CCI orders probe into Sun Pharma-Ranbaxy deal



For the first time, CCI has initiated its first Phase II investigation in the proposed combination between Sun Pharmaceutical and Ranbaxy Laboratories. The investigation concerns Sun Pharmaceutical's proposed acquisition of Ranbaxy Laboratories from Ranbaxy's Japanese parent Daiichi Sankyo. The transaction is valued at about USD 4 billion and would, if completed, reportedly create the world's fifth-largest generic pharmaceutical company and India's largest. The

CCI is prima facie of the opinion that the combination could cause an appreciable adverse effect on the Indian market. CCI has also directed the companies to publish details of the proposed combination in the prescribed format within 10 working days.

(Source: The Economic Times dated August 27, 2014)

International

DOJ fines Berkshire Hathaway \$896,000 for failure to comply with premerger notification requirements



On August 20, 2014, Berkshire Hathaway Inc. has agreed to pay a civil penalty of \$896,000 concerning its conversion of notes into voting securities of USG Corporation in December 2013, which was more than five years after Berkshire's HSR Act filing to acquire an initial USG stock position and thus past the expiration date of the original HSR. In addition, Berkshire previously had made a corrective filing in July 2013 concerning the acquisition of voting securities of a different issuer and was, therefore, treated as a repeat offender by the Federal Trade Commission.

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

IV. MISCELLANEOUS NEWS

India

CCI empowered to levy interest on non-payment of monetary penalty

In exercise of the powers conferred by Section 64 of the Act, CCI by way of a notification dated June 25, 2014, has amended the Competition Commission of India (Manner of Recovery of Monetary Penalty) Regulations, 2011. Pursuant to the amendment, the demand notice issued to defaulters would specifically mention that the any default in payment of the penalty would attract a penal interest of 1.5 per cent per month. Further, CCI can also take necessary steps for recovery of the sum so due besides initiating actions for non-compliance of the orders of the CCI. It will empower CCI to recover penalties from defaulters in a more effective manner.

(Source: CCI Notification dated June 25, 2014)

Pay for Delay deals under CCI scanner

CCI is considering to probe patent settlement deals in pharmaceutical sector including the one between Hoffmann-La Roche & Cipla on lung cancer drug, erlotinib and between Merck's & Glenmark on a new diabetes drug. CCI has concern that such settlements may aim to delay the entry of cheaper generic medicines in the market. In last one year, European Commission has imposed a total fine of €600 million (INR 4500 crore) on several pharma companies including Indian based Ranbaxy, Unichem, Matrix (now part of Mylan) and Lupin for concluding series of deals all aimed at delaying or blocking the market entry of generic medicine.

(Source: The Mint dated August 3, 2014)

SC orders DLF to deposit penalty imposed by CCI



Supreme Court by way of its order dated August 27, 2014 directed DLF to deposit the penalty amount of INR 630 crore within a period of 3 months. The Court further directed DLF to deposit INR 50 crore within a period of 3 weeks as a pre-condition for hearing the appeal on merits against order passed by the COMPAT and to file an undertaking to pay 9% interest on the entire penalty if they lose the final appeal. The On May 19, 2014, in a landmark order, the COMPAT upheld the order of the CCI imposing a record penalty of INR 630 crores (USD 140 million) on DLF for abusing its dominant position.

(Source: Supreme Court dated August 27, 2014)

High Court of Delhi affirms stay on CCI investigation against ICAI

High Court of Delhi by way of an order dated August 12, 2014, dismissed an appeal filed by CCI against a stay order of the Single Bench of the High Court, wherein the Single Bench has stayed a CCI investigation

against ICAI for abusing its dominant by not permitting anyone to conduct continuing professional education (CPE) programmes, which the ICAI, as the profession's regulator, has made compulsory for CAs to attend. The bench observed that the matter is pending before the single bench on merits and hence, it is not proper to go into the merits of the case.

(Source: Delhi High Court order dated August 12, 2014)

International

United States: London Metal Exchange (LME) wins dismissal from antitrust suit



LONDON METAL EXCHANGE

On August 26, 2014, Southern District of New York held that LME is immune from suit in the U.S. under the Foreign Sovereign Immunities Act. The LME is a 140 year old global commodities exchange and is the world center for options and futures trading of non-ferrous metals, like aluminum, copper and zinc. LME was dismissed from a group antitrust lawsuit in the U.S. over claims it aided companies including Goldman Sachs and Glencore in constricting aluminium supplies to drive up prices.

(Source: The Bloomberg dated August 26, 2014)



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