

Competition News Bulletin



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I. CARTELS AND ANTI-COMPETITIVE AGREEMENTS

INDIA

Competition Commission of India (CCI) penalizes Jute Mills Association and Gunny Trade Association for indulging in Anti-Competition Practices



The CCI by way of order dated October 31, 2014 in Indian Sugar Mills Association vs. Indian Jute Mills Association & Ors. has imposed a penalty of ₹ 7.68 lakh and ₹ 35,160 on Indian Jute Mills Association (IJMA) and Gunny Trade Association (GTA) respectively @ 5% on the average turnover for the financial years 2010-2011, 2011-2012 and 2012-2013 for violating the Section 3 of the Competition Act, 2002 (“the Act”). The information was jointly filed by Indian Sugar Mills Association,

National Federation of Co-operative Sugar Factories Ltd. and All India Flat Tape Manufacturers Association alleging anti-competitive practices carried on by the members of IJMA and GTA in fixation of sale price of jute packaging material by issuing of Daily Price Bulletin (“DPB”) by GTA for jute bags.

CCI observed that the conduct of the IJMA and GTA members’ amounts to anti-competitive agreement entered amongst themselves, by following daily price bulletin (DPB). Daily price bulletin was updated by GTA on their website and the same provided an online platform for sellers to interact and discuss prices. The members of IJMA also had access to GTA’s DPB that was easily available online. This clearly shows that all the parties had entered into concerted practices of mutual agreement by quoting similar prices. Further, CCI observed that due to statutory mandate, GTA and IJMA, are taking undue advantage and increasing the “prices of jute bags in tandem. The GTA members manipulated the prices to an extent that they were completely unrelated to the price of raw jute in the market. Therefore, their interest was clearly indicated. The IJMA as an association provides forum to its members for discussion of prices mentioned in DPB and involved in the process. CCI, apart from issuing a cease and desist order against the associations and imposing penalties upon them, also imposed penalties on the individuals who were members of the Executive Committee of IJMA and the Executive Committee and the DPB Sub-Committee of GTA @ 5% of the average income of the last three financial years.

(Source: CCI order dated October 31, 2014)

International

European Commission: Biogaran appeals against Servier “pay for delay”



An appeal has been filed by Biogaran against the European Commission’s (EC) decision fining it for “pay for delay” agreements entered into by its parent company Les Laboratoires Servier (“Servier”) with several generic companies. In July 2014, EC fined Servier and five generic companies for practices delaying generic entry of the cardio-vascular drug perindopril in breach of Articles 101 and 102 of the Treaty on the Functioning of the European Union (“TFEU”). Perindopril is a blockbuster blood pressure control

medicine and used to be Servier's best-selling product. The Commission also confirmed that Servier held significant market power in the market for the perindopril molecule and had abused its dominant position by inducing such settlement agreements and by acquiring scarce competing technologies, which made generic entry more difficult. Servier S.A.S was fined EUR 330,997,200 jointly and severally with Servier. Furthermore, liability was shared jointly and severally with Servier Laboratoires Limited for EUR 135,841,600 and with Biogaran for EUR 131,532,600. Pursuant to this, Biogaran has now brought an appeal with the General Court ("GC") seeking the annulment of the Commission's decision in so far as it relates to Biogaran, or a reduction of the fine imposed.

(Source: Official Journal of European Union dated November 10, 2014)

US: DOJ: Continental Automotive Electronics and Continental Automotive Korea pleads guilty for bid rigging



Continental Automotive Electronics LLC and Continental Automotive Korea Ltd. have pleaded guilty and agreed to pay a single criminal fine of \$4 million for their roles in a conspiracy to rig bids for instrument panel clusters installed in vehicles manufactured and sold in the United States. The said companies have acknowledged that they and their co-conspirators held meetings and conversations to discuss and agree upon allocation of sales of instrument panel clusters, and the bids and price quotations each would submit. In addition to the criminal fine, the companies have agreed to cooperate in the department's ongoing investigation. However, the plea agreement is subject to court approval.

(Source: Department of Justice: Press Release dated November 24, 2014)

US: DOJ: Eleven Northern California real estate investors indicted for bid rigging



A federal grand jury in San Francisco has indicted 11 real estate investors on multiple charges of bid-rigging and fraud schemes at foreclosure auctions in Northern California. The said Collusion at the foreclosure auctions created an unfair playing field where conspirators pocketed illegal payoffs at the expense of lenders and distressed homeowners. Until date, prosecutors in the U.S. Attorney's Office have reached plea deals with 47 people who pleaded guilty to criminal charges as a result of the office's ongoing investigations into bid rigging and fraud at public foreclosure auctions in Northern California.

(Source: Department of Justice: Press Release dated November 20, 2014)

US: Sony to issue refunds to settle FTC deception charges

Sony Computer Entertainment America ("Sony") has agreed to settle Federal Trade Commission charges that it deceived consumers with false advertising claims about the "game changing" technological features of its PlayStation Vita handheld gaming console during its U.S. launch campaign in late 2011 and early 2012. As part of its settlement with the FTC, Sony is barred from making similarly misleading advertising claims in the future, and will provide consumers who bought a PS Vita gaming console before



June 1, 2012, either a \$25 cash or credit refund, or a \$50 merchandise voucher for select video games, and/or services. Sony will provide notice via email to consumers who are eligible for redress after the settlement is finalized by the Commission. In a related action, the Commission charged that Deutsch LA, Sony’s advertising agency for the PS Vita launch, knew or should have known that the advertisements it produced contained misleading claims about the console’s cross platform and 3G capabilities. The FTC also alleges that Deutsch LA further misled consumers by urging its employees

to create awareness and excitement about the PS Vita on Twitter, without instructing employees to disclose their connection to the advertising agency or its then-client Sony. The proposed settlement orders prohibit both Sony and Deutsch LA from making similar misrepresentations in the future when promoting the features or capabilities of handheld gaming consoles. The proposed order against Deutsch LA also bars it from misrepresenting that an endorser of any game console product or video game product is an independent user or ordinary consumer of the product. In addition, the proposed order requires Deutsch LA to disclose a material connection, where one exists, between any endorser of a game console product or video game product and Deutsch LA or other entity involved in the manufacture or marketing of the product. These requirements are in line with the FTC’s Endorsement Guides. The proposed order against Sony requires it to send email notifications to all consumers it can reasonably identify as having bought a PS Vita before June 1, 2012.

(Source: The Wall Street Journal, dated November 25, 2014)

II. ABUSE OF DOMINANCE/MARKET POWER

India

No case relating to abuse of dominant position was decided by CCI during the month of November, 2014.

International

No notable case relating to market power/abuse of dominant position has been reported from any jurisdiction during the month of November, 2014.

III. COMBINATION

India

CCI approves proposed business transfer agreement between Jaiprakash and Shree Cement

CCI has approved the Business Transfer Agreement between Shree Cements Limited (SCL) and Jaiprakash Associates Limited (JAL). Under the said agreement, JAL has proposed the sale of a cement grinding unit at Panipat in Haryana with a capacity of 1.5 million tonnes per annum to SCL on September



19, 2014. CCI, while approving the said transaction, observed that “in the relevant market comprising the states of Haryana and Rajasthan, the market shares in terms of installed capacity is 23% of SCL and 3% for the cement grinding unit. Thus the post combination market share of the acquirer will increase to 26%. The market is moderately concentrated but the change in market concentration as indicated by incremental HHI would not be significant”. Therefore, CCI opined that the proposed combination is not likely to have an appreciable adverse effect on competition in India.

(Source: CCI order dated November 3, 2014)

CCI approves Panasonic-Minda Industries commercial alliance



CCI has approved the proposed joint venture between Minda Industries and Japanese group Panasonic, observing that the deal would not have any appreciable adverse effect on competition in India. Under the said alliance, Minda Industries would enter into a joint venture (JV) with Panasonic for manufacture and sale of lead acid storage batteries (LASB) for automotive and industrial applications. Panasonic would have 60% stake while the rest would be held by Minda Industries in the entity, which would be housed in Minda Batteries Pvt. Ltd. Post-deal, Minda

Batteries would be renamed as Panasonic Minda Storage Batteries India Pvt. Ltd. CCI observed that, “Since Minda Industries and Panasonic have only a small presence in their respective LASB segments in India, therefore, proposed combination is not likely to give rise to any competition concern in India”.

(Source: CCI order dated November 5, 2014)

CCI approves Coca-Cola’s commercial alliance with Monster Beverages



CCI has approved Coca-Cola’s proposed commercial alliance with US-based Beverage Corp. in the energy drinks market. The deal involved Coca-Cola, its group firm European Refreshments, Monster and its subsidiary New Laser Corp. CCI observed that the deal is not likely to have an appreciable adverse impact on competition in the India as the “parties have insignificant presence in this (energy drinks) segment, in India and post combination, the vertical arrangement between the parties is not likely to result in the

foreclosure of competition in view of their insignificant presence in the energy drink segment, in India.”

(Source: CCI order dated November 10, 2014)

Holcim/Lafarge gets extra CCI scrutiny



CCI has invited comment from public regarding the proposed US\$50 billion merger between Holcim and Lafarge, as CCI is concerned about how the said transaction might affect cement market in India. This is the second public scrutiny of M&A deal

by CCI after Ranbaxy - Sun Pharma merger. The public notice is available on CCI website. The comments with respect to the Holcim-Lafarge deal are required to be filed within 15 days, along with supporting documents on how the merger can adversely impact the concerned person or entity.

(Source: The Economics Times dated November 23, 2014)

INTERNATIONAL

Pakistan: CCP opens second phase review on the proposed acquisition of vaccines business of Novartis AG by GlaxoSmithKline PLC



The Competition Commission of Pakistan ("CCP") after concluding the first phase review of the pre-merger for the proposed acquisition by GlaxoSmithKline Plc., ("GSK") of the vaccines business (excluding Influenza business except in China) from Novartis AG ("Novartis"), has ordered to open a second phase review. Both GSK and Novartis operate in the same relevant product market of meningococcal vaccines through their subsidiaries in Pakistan, where the preliminary examination of the pre-merger application revealed that GSK holds a dominant position, and with the proposed acquisition, GSK will strengthen its dominant position, which may pose competition concerns in the market of meningococcal vaccines in Pakistan. CCP has opened a second phase review of the proposed acquisition in order to determine whether or not the said acquisition is likely to substantially lessen competition by creating or strengthening a dominant position in the relevant product market in Pakistan.

(Source: Competition Commission of Pakistan dated November 13, 2014)

Singapore: Jet-Etihad deal gets Singapore clearance



Jet Airway commercial alliance with Abu Dhabi-based Etihad, including an INR 2,060-crore stake sale, has been formally approved by the Competition Commission of Singapore ("CCS"). CCS, while approving the alliance observed that "the alliance by its nature has potential to adversely impact competition in the country, but on the balance the efficiencies from the deal outweigh the anti-competitive effect,". The deal, involved purchase of a 24% stake in Jet Airways by Etihad, finally got consummated late last year after clearance from various Indian regulators.

(Source: Competition Commission Singapore, Order dated November 7, 2014)

US: DOJ reaches \$5 million settlement with Flakeboard, Arauco, Inversiones, Angelini and Sierrapine for illegal premerger coordination.



The U.S. Department of Justice (DOJ) reached about \$5 million settlement with Flakeboard America Limited; its parent companies, Celulosa Arauco y Constitución S.A. and Inversiones Angelini y Compañía Limitada; and SierraPine for Illegal Premerger Coordination. The said settlement requires the companies to pay a combined \$3.8 million in civil penalties for violating

the Hart-Scott-Rodino (HSR) Act of 1976. In addition, for violating Section 1 of the Sherman Act, Flakeboard requires to disgorge \$1.15 million in illegally obtaining profits and both Flakeboard and Sierra Pine are also required to establish antitrust compliance programs and have agreed to certain restrictions. Flakeboard and Sierra Pine abandoned the proposed acquisition on September 30, 2014, after the department expressed concerns about the transaction's likely anti-competitive effects in the production of medium-density fiberboard or MDF. MDF is a manufactured wood product widely used in furniture, kitchen cabinets, and decorative mouldings. Before the proposed acquisition, Sierra Pine operated particle board mills in Springfield, Oregon, and Martell, California, that competed directly with Flakeboard's particle board mill in Albany, Oregon. Particle board is an unfinished wood product that is widely used in counter tops, shelving, low-end furniture, and other finished products. The Springfield and Martell mills were included in the proposed acquisition along with a third Sierra Pine mill that produced MDF.

(Source: Department of Justice: Press Release dated November 7, 2014)

EU: Commission approves aerospace and defence joint venture between Airbus and Safran



The European Commission has approved joint venture for space launchers, satellite subsystems and missile propulsion between Airbus Group N.V. of The Netherlands and Safran S.A. of France. Both Airbus and Safran are active in the aerospace and defence industries. However, the decision is conditional upon the exclusion of Safran's activities in electric satellite thrusters from the joint venture, as well as on certain supply assurance commitments.

(Source: European Commission: Press Release dated November 26, 2014)

IV. MISCELLANEOUS NEWS

India

Competition Commission of India to host ICN Merger Workshop, 2014



The ICN Merger Workshop, 2014 will be hosted by Competition Commission of India under ICN auspices. During the two-day Workshop, discussions will focus on the role of international cooperation in merger enforcement. The workshop will take stock of extant mechanism for international cooperation between competition agencies in merger enforcement and focus on building an effective framework for international cooperation in the areas of merger remedies, and outreach initiatives in the context of merger control.

.The workshop is intended to facilitate and foster greater cooperation among Competition Authorities on key areas pertaining to mergers. Such cooperation has become imperative in the wake of substantial increase in International mergers and acquisitions. (<http://www.icnmwgdh2014.in/>)

Similar rate of interest charged by banks under CCI investigation



CCI might initiate an investigation suspecting a possible unfair practice by banks with almost similar interest rates, to examine whether they are operating as a cartel in fixing the interest rates. CCI might take a detailed look at the matter since the Reserve Bank of India (RBI) has freed up bank interests, which are set by respective lenders.

(Source: Zee news dated November 19, 2014)

International

EU: Commission welcomes entry into force of Cooperation Agreement with Switzerland



The European Commission will enter in to cooperation agreement in competition matters with Switzerland on 1 December 2014. The agreement will strengthen co-operation between the European Commission and the Swiss Competition Commission. This is the first time the EU concludes an agreement with a third country that will enable the two competition authorities to exchange evidence they have obtained in their respective investigations (a so-called "second generation" agreement).

The Agreement will provide a framework for co-ordination on competition enforcement activities. This is the first time that such a cooperation agreement also allows the authorities to exchange evidence obtained in their respective investigations. The exchange of information is subject to strict conditions protecting business secrets and personal data. Information can be exchanged when both authorities investigate the same or a related conduct or transaction and the receiving authority can use the evidence only for the enforcement of its competition rules. In addition, no evidence can be used to impose sanctions on individuals.

(Source: European Commission Press Release dated November 28, 2014)

European Commission: Council adopts antitrust damages directive

The EU Council of Ministers formally adopted the Commission's proposal for a Directive on antitrust damages actions which was submitted to the Council and the European Parliament in June 2013. The Directive will help citizens and companies in claiming damages if they are victims of infringements of the EU antitrust rules, such as cartels and abuses of dominant market positions. The Directive also aims to remove a number of practical difficulties which victims frequently face when they try to obtain compensation for the harm they have suffered. In particular, it will give victims easier access to evidence they need to prove the damage and more time to make their claims.

(Source: European Commission Press Release dated November 10, 2014)

Philippines endorsed its first Anti-Trust law bill

Philippines finally introduced its antitrust legislation. The House appropriation Committee has endorsed its version of anti-trust law, titled as 'Philippines Competition Act'. The bill envisages anti-competitive agreements or conduct, abuse of dominant position, anti-competitive agreements or conduct, anti-competitive mergers and acquisitions, and other unfair trade or business practices'. The Bill provides for the creation of a Philippine Competition Commission under the office of the president to implement the proposed national competition policy. The Commission would act as a fair trade regulator and would ensure a level playing field for all the competitors in the market.

(Source: <http://www.philstar.com/business/2014/11/04/1387693/house-panel-endorses-anti-trust-bill>)



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