Competition News Bulletin

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June, 2016

Inside...

I. CARTELS AND ANTI-COMPETITIVE AGREEMENTS

INDIA

Competition Appellate Tribunal (COMPAT) sets-aside penalty imposed on Jungle Boot suppliers for alleged bid rigging

COMPAT by its order dated April 12, 2016 has set-aside the penalty imposed on suppliers of Polyester Blended Duck Ankle Boot Rubber Sole/ Appellants (Jungle Boots) against allegations of bid-rigging. A reference was filed before the Competition Commission of India (CCI) by the DG(S&D) alleging that appellants had indulged in bid-rigging in response to tender dated June 14, 2011 issued by DG(S&D). The CCI directed the Director General(DG) to investigate the said allegations.

The DG found that the appellants had been quoting identical/near identical prices against the tenders as evident from the direct and indirect evidence. The DG in its Investigation Report found that the appellants had indulged in bid-rigging in contravention of Section 3(1) read with Section 3(3)(a) and 3(3)(d) of the Competition Act, 2002. (Act).

The CCI considered the Investigation Report and observed that there has been quotation of near identical prices despite the manufacturing units having been located in different geographical locations with varying tax structure and different margins; possession by one bidder of the performance statements of other bidders; meetings under the platform of trade federation; and failure on the part of the opposite parties/appellants to provide any plausible explanation for the same, are clearly indicative of the fact that the appellants entered into an agreement to determine prices besides rigging the bid. The CCI approved the findings of the DG and imposed a penalty at the rate of 5% of the average turnover for the preceding three financial years.

However, Hon'ble COMPAT, accepting most of the points raised in appeals as well as relying on the decision of the Supreme Court, observed that mere identical pricing quoted by the appellants in response to tender enquiry dated 14.06.2011 and so called "plus factors" for recording a finding of bid-rigging is legally unsustainable and deserves to be set-aside. Further, Hon'ble COMPAT also observed that the suppliers/appellants were multi-product companies and the CCI committed grave illegality by imposing the penalty on the basis of entire turnover of the companies. Hon'ble COMPAT also directed the CCI to refund the amount of the penalty deposited pursuant to the interim order passed by the COMPAT within a period of three months, failing which, the appellants shall be entitled to interest @12% per annum from the date of the COMPAT decision.

(Source: Order dated April 12, 2016. For full text see COMPAT website-www.compat.nic.in)

COMPAT sets-aside penalty imposed on domestic airlines and remands the matter back to the CCI

COMPAT by its order dated April 18, 2016 set-aside the penalty imposed on three domestic airlines by the CCI for alleged cartelization and remanded the matter back to the CCI for passing appropriate order keeping in view the principles of natural justice. In the present case an information was filed by the Express Industry Council of India, alleging Jet Airways (India) Ltd., SpiceJet Ltd., Interglobe Aviation Ltd. (Indigo), Air India Limited and Go Airlines (India) Limited had joined hands and formed a cartel to introduce fuel surcharge (FSC) for transport cargo with effect from May 15, 2008and uniformly increased the price from time to time, adversely affecting the freight companies and the end consumers. CCI, found a prima facie case and referred the case for investigation by the DG.

The DG, after a detailed investigation, found that the evidence available is enough to conclude the existence of a cartel amongst the aforesaid airlines.

However, the CCI disagreed with the entire findings of the DG and held that only Jet, SpiceJet, and Indigo acted in a concerted manner in fixing and revising the FSC rates and, thereby, contravened the provisions of Section 3(1) and Section 3(3) (a) of the Act. CCI did not find any evidence of collusion between Air India and Go –Air with the other three Airlines and exonerated Air India and Go-Airlines from the allegation. By its order dated November 17, 2015, the CCI imposed a total penalty of approx. INR 258 Crores on Jet Airlines , SpiceJet, and Indigo.

The order was challenged before COMPAT on the ground, among others, that the CCI had failed to give any notice to the OPs/ appellants before recording its dis-agreement with the findings of the DG. The appellants argued that such notice would have enabled them to file their objections with respect to such reasons and make arguments on that basis.

The COMPAT was of the view that by omitting to give notice to the appellants incorporating the reasons for CCI's disagreement with the findings and conclusion recorded by the DG, the CCI deprived the appellants of a valuable opportunity to effectively defend themselves against the proposed action. Accordingly, the violation of the principles of natural justice by the CCI has caused serious prejudice to the appellants. The COMPAT has resultantly set-aside the impugned order with the direction to re-consider the DG Report. If the CCI is to disagree with the findings and conclusions recorded by the Jt. DG, then it shall indicate the reasons for such disagreement and issue notice to the parties incorporating the reasons of disagreement and give them opportunity to file their replies/ objections. The CCI shall then pass an order in accordance with law, after hearing the OPs/appellants.

(Source: Order dated April 18, 2016. For full text see COMPAT website-www.compat.nic.in)

COMMENT: *The present Order of COMPAT assumes importance being the first of its kind as no previous order of CCI has been overruled on account of the fact that prior notice of disagreement with findings of DG was not given by CCI to the OPs. This order now lays down a requirement on CCI to give such a notice in all future cases .*

COMPAT sets-aside penalty imposed on All India Motor Transport Congress (AIMTC) for alleged increases of transport rates in collusion

COMPAT by its order dated April 18, 2016 has set-aside the order of CCI where AIMTC was penalized for allegedly exhorting truck transporters for increasing prices of transportation by 15% following an increase of diesel price by INR 5/Ltr on 13 April 2012.In the present case, an information was filed by Indian Foundation of Transport Research & Training alleging that pursuant to hike in diesel prices by the Government on 13 April 2012, the Vice-President, former President as well as then-President of AIMTC issued press statements to the effect that the transport tariffs would be increased by 15% with effect from September 14, 2012.

The CCI directed the Director General for investigation, where after , DG observed that the fact that the statements made by the President/Spokesperson of the appellant in press amounted to a direction/message conveying the decision of the Executive body to all its members; that the alleged announcement in public to increase the freight charges subsequent to hike in diesel price had a major role in determining the price of truck rental indirectly and this act of AIMTC is violative of Section 3(3)(a) of the Act and that the AIMTC has asked its members to effect 15% increase in freight charges across the country ignoring the actual effect of the diesel price hike and as such it has contravened Section 3(3)(a) of the Act.

The CCI approved the findings of the DG Report and imposed a penalty of INR 1424521/-onAIMTC.

In appeal filed by AIMTC, the COMPAT ruled that the DG had placed undue importance of the identity of replies given by some transport companies. However, the DG completely ignored the contents of the replies of almost all the transport companies which categorically denied receipt of any diktat/ directive/ instruction from or on behalf of the appellant to increase the truck freight by 15%. This approach of the DG has been considered as "cherry-picking" by the COMPAT meant to support the DG's "imaginary conclusion" that the transport companies had discussed the issue together before submitting reply to the investigation notices. Further, if the DG felt that the transport companies had internally circulated the draft replies before submitting to the DG, he could have summoned the representative of concerned respondent using the powers vested with him under the Act. However, the DG did not invoke the relevant statutory provisions to find out whether his assumptions were correct.

Further, the COMPAT considered that the DG and CCI did not factually verify the actual increase in rates pursuant to the alleged announcements/press releases. A perusal thereof showed that on 14 routes the range of increase was 0–5%. On 16 routes, it was between 5.1 – 10%. On 7 routes, it was 10.1 – 15% and on 14 routes it was above 15%. In the absence of any evidence to that the truck rental/freight was increased by the transporters by 15% across the board with effect from 14 September 2012 or immediately thereafter, no person of ordinary prudence could have recorded a finding of contravention of Section 3(3)(a) of the Act.

As regards the press releases, the COMPAT observed that the AIMTC had only expressed its resentment against the hike in diesel price and expressed that road transport industry will not be able to absorb the said hike. There is nothing in the two press releases from which one could infer that the appellant had exhorted its members to increase the truck freight by 15% in the light of hike in diesel price. It is unfortunate that the DG and the CCI have misconstrued the press releases as a clarion call given by AIMTC for increase in truck freight by 15%. Without going into the evidence available on record the CCI and the DG based their finding on the uncorroborated and unsubstantiated news reports, treating the same as gospel truth despite the vehement denial of the same by AIMTC and its two-office bearers.

Lastly, the COMPAT also considered that the DG as well the CCI had laid undue emphasis on the earlier MRTPC decision which has no bearing on the present case. The COMPAT held that the findings recorded by the DG were based on pure conjecture and assumption as also misreading of the record and were not based on any tangible evidence. The CCI committed grave error by approving the findings recorded by the DG and, as such, the impugned order is legally unsustainable.

(Source: Order dated April 18, 2016. For full text see COMPAT website-www.compat.nic.in)

COMPAT sets-aside penalty imposed on 12 suppliers to ordnance factories for indulging in cartelization for supplying raw material that is used for manufacturing of 81 mm bomb

COMPAT by its order dated May 10, 2016 has set-aside the order of CCI where it had imposed a penalty to the tune of INR 3 Crores, on 12 suppliers for indulging in cartelization for supplying “CN containers with disc” used for manufacturing of 81 mm bomb. CCI had asked the 12 suppliers to "cease and desist" from indulging in anti-competitive practices.

The Comptroller and Auditor General (CAG) in his report on Defence Sector for the year 2010-11, made an observation that there existed a cartel in the supply of CN Containers with the disc. CCI suo-moto took cognizance of that observation and ordered a detailed investigation into the alleged anti-competitive practice adopted by the suppliers of CN Containers with the disc for violation of Section 3(3)(d) of the Act.

In the appeals filed against the order passed by the CCI, COMPAT considered whether the appellants (including, M/s Narendra Explosives Ltd.) were involved in collusive bidding in the supply of ‘CN Containers with disc’ to Ammunition Factory, Khadki (Pune), Ordnance Factory, Dehu Road (Pune) and

Ordnance Factory, Chandrapur, and contravened Section 3(3)(a) and 3(3)(d) read with Section 3(1) of the Competition Act, 2002 (hereinafter the Act).

The DG report found that nearly all the suppliers had quoted identical rates notwithstanding the fact that they were located at different places. It was also observed that the opposite parties simultaneously increased or decreased the rates for consecutive tender enquiries. The factory-wise and tender-wise information received from the 3 Ordnance Factories and discussed revealed that several opposite parties quoted identical bids. In some of the tenders, only one enterprise submitted the bid which appears to be a case of bid suppression. Moreover, even when more than one bidder submitted identical bids, on negotiation of price, all except one regretted and the tender was awarded to the one bidder. The CCI approved the findings of the DG Report and imposed a penalty @ 3% of their turnover on the appellants and others.

In appeal, the COMPAT ruled that the Dy. DG committed a jurisdictional error by investigating the conduct of M/s. Narendra & Co. Neither the CAG Report nor the order under Section 26(1) of the Act had included the name of M/s Narendra & Co. The jurisdiction of the DG is circumscribed by the mandate of the direction given by the CCI. He cannot suo-moto initiate or conduct investigation into any allegation of violation of the particular provision of Section 3 and/or 4 of the Act. The COMPAT also held that the participation of Shri Sudhir Mital (Member, CCI) in the decision-making process despite the fact that he had not heard the arguments of the advocates/representatives of the opposite parties has the effect of vitiating the impugned order on the ground of violation of principles of natural justice.

COMPAT held that the observations made by the Dy. DG that the market conditions were conducive for collusive bidding were based on assumptions, conjectures and were also self-contradictory. It held that mere presence of some common features between some of the suppliers cannot lead to an inference that the market for CN Containers was conducive for reaching an agreement for bid-rigging among the bidders.

On the issue of the absence of any new entrant in the market, COMPAT held that the investigating officer had contradicted himself. He had observed that the market of CN containers was very limited, the requirement of product was also limited and that could be the reason why no new player has shown interest in the business. At the same time, DG had observed that absence of new entrant in the market is conducive for an agreement amongst the existing players. However, while making this observation, the Dy. DG lost sight of the fact that M/s. Narendra Explosives Ltd. had entered the market of CN containers in 2007

COMPAT observed that the CCI did not advert to objections raised by the appellants and other manufacturers to show that the market conditions were not conducive to collusive bidding and there was no evidence of any agreement between them. In the questionnaire circulated among the suppliers, the DG had specifically asked them whether there was any meeting of mind and each one of them answered in negative. The DG could not collect any independent evidence to prove that the suppliers had met before submitting their bids in response to the different Tender Enquiries or they had reached some consensus on the pricing of the product. Therefore, the theory of meeting of mind propounded by the DG and approved by the CCI is liable to be rejected.

It was held that the issue relating to cost of manufacturing, had no bearing on the issue of collusive bidding/ bid rigging or formation of a cartel. This factor although may have some bearing on the profit earned by some of the manufacturers, but it cannot lead to an inference of collusive bidding or bid rigging by the appellants and other suppliers.

Lastly, the COMPAT considered whether the quoting of identical or near identical price by the suppliers can lead to an inference of collusive bidding/bid-rigging. It was noted that the price quoted by M/s. Narendra Explosives Ltd. in response to the majority of tender enquiries investigated by the DG was not even remotely similar to the price quoted by other bidders except in one or two cases. Therefore, a sweeping observation made in the investigation report that the appellants and other suppliers had quoted identical prices was totally uncalled for. COMPAT also gave due consideration to the reasons given by the appellants for substantial similarity in the prices quoted by them and other suppliers in response to various tender enquiries, noting that the suppliers had quoted the price keeping in view the last purchase price which was available on the website of the Ordnance Factories and in view of the fact that the supplies were to be made only to three Ordnance Factories, the suppliers had the temptation to quote the price keeping in view the last purchase price.

Relying on various Supreme Court judgments, COMPAT considered the question whether quoting identical or near-identical price by the sellers/suppliers of a product can by itself be construed as an act of cartelization/ bid-rigging and answered the same in negative. It held that mere identity of price did not furnish a valid ground for holding that the respondents had indulged in bid rigging. The CCI committed grave error by approving the findings recorded by the DG and, as such, the impugned order is legally unsustainable. The order of CCI has been set-aside.

(Source: Order dated May 10, 2016. For full text see COMPAT website-www.compat.nic.in)

COMPAT sets aside CCI's penalty on Alkem Laboratories for indulging in anti-competitive practices

COMPAT by its order dated May 10, 2016 has set-aside the order of CCI in so far as it had held that Alkem Laboratories Limited (Alkem) for violation of Section 3(1) of the Act and had imposed a penalty of INR 74 crores.

Pursuant to the case by the Informant (Mr P K Krishnan, Proprietor, Vinayaka Pharma) the CCI passed an order directing the DG to investigate into the alleged anti-competitive practices by Alkem. It is alleged that imposing the condition of procuring No Objection Certificate (NOC) from All Kerala Chemists and Druggist Association (AKCDA) by Alkem was in contravention of the provisions of section 4 of the Act and amounts to an act of refusal to deal and driving existing competitors out of the market.

The DG, in his detailed report submitted that the AKCDA as an association of stockists and distributors has been following a practice of NOC necessarily required to be taken from it for appointment of a new/ additional stockiest which had the effect of limiting and controlling the supply of drugs and medicines in Kerala, apart from being an entry barrier, thereby contravening the provisions of Section 3(3) (b) read with Section 3(1) of the Act.

The CCI noted that the evidence collected by the DG in this case revealed that Alkem was holding up the supply of stocks to other stockists because of the pressure of AKCDA. Such a refusal by Alkem, to supply drugs and medicines to the informant was because of the instructions given by AKCDA. It observed that although the agreement between AKCDA and Alkem would not fall within the ambit of section 3(3) or 3(4) of the Act, but was still amenable to the jurisdiction of the CCI under section 3(1) if the same had an appreciable adverse effect on competition (AAEC).

The CCI held that even though Alkem acted on the directions and threats of AKCDA, the same could have approached the CCI instead of complying with the directions of AKCDA which were against the order of the Commission for refusing to deal with unauthorized stockists.

COMPAT, while setting aside the observations made by the CCI found that the informant deliberately suppressed the vital facts and documents from the Commission, which resulted in passing of the order under Section 26(1) of the Act, that Alkem had refused to appoint informant as a stockist and supply the medicines on the ground of non-production of NOC from AKCDA. The CCI was not apprised of the fact that Alkem did not supply medicines to the Informant because the he was not appointed as a stockiest by the competent authority of Alkem. The CCI had not been apprised about the fact that the Assistant Drugs Controller, Ernakulam had accepted the non-appointment of Informant as the stockiest as a valid ground for refusal to supply. Further, as soon as the Informant had been appointed the stockiest legitimately, Alkem had commenced supply to the Informant. However, both the DG as well as the CCI moved on the erroneous presumption that the Informant had been appointed the stockiest by the competent authority of Alkem.

The COMPAT held that the findings recorded by the CCI about the alleged complicity of Alkem in the anti-competitive practices of AKCDA are self-contradictory and are perverse. Once the element of diktats by the AKCDA to the pharmaceutical companies to insist on production of NOC for appointment of a person as a stockist or supply of medicines, is proved, the element of agreement automatically disappears and thus Alkem could not have be held guilty of acting in violation of Section 3(1) of the Act. The subsequent appointment of the informant as a stockist by the competent authority without asking for

NOC from AKCDA refutes the finding recorded by the CCI that Alkem had acted in violation of Section 3(1) of the Act.

Regarding the issue of individual liability of officers of Alkem, the COMPAT held that neither the Informant nor DG produced any evidence to prove that Johnson Mathew and T K Haridas (that Appellants Nos. 2 and 3) were in-charge of and were responsible to Alkem, for the conduct of its business, ignoring the stand of Alkem that the application made by the Informant as a stockist was processed by two of its officers and the final decision was required to be taken by the Vice President-Marketing and the authorised signatory, but the letter appointing the informant as a stockist was issued by Shri Paul Madavana without any authority to do so. The Assistant Drugs Controller accepted this statement and the DG and the CCI did not find any valid ground to discard the same. Therefore, Appellants Nos. 2 and 3 were neither the in-charge of nor responsible to Appellant No. 1 for the conduct of its business so as to attract Section 48(1) of the Act.

The COMPAT concluded that the findings recorded by the CCI, against Alkem were legally unsustainable, and thus the consequential penalty imposed by the CCI on Alkem and Appellants Nos. 2 and 3 were liable to be quashed.

(Source: Order dated May 10, 2016. For full text see COMPAT website-www.compat.nic.in)

INTERNATIONAL

EU: European Commission fines Pometon € 6.2 million for participation in steel abrasives

The EC has found that Italian abrasives producer Pometon S.p.A. breached EU competition law by participating in a cartel to coordinate steel abrasives prices in Europe for almost four years. The EC has imposed a fine of € 6197000. In April 2014, the EC adopted a settlement decision concerning the participation in the same cartel of Ervin, Winoa, Metalltechnik Schmidt and Eisenwerk Würth. Pometon chose not to settle and consequently the investigation continued under the normal cartel procedure. In December 2014, the Commission sent Pometon a statement of objections, giving it the opportunity to exercise its rights of defence.

Metal scrap, which is the main raw material for steel abrasives, is characterised by sharp price fluctuations as well as significant price differences between the EEA countries. To compensate for such fluctuations, the cartel participants set up together a specific surcharge (called the "scrap surcharge" or "scrap cost variance (SCV)") based on a common formula. In addition, the cartelists agreed not to compete against each other on price with respect to individual customers.

((Source: EU Press Release dated May 25, 2016 available at http://europa.eu/rapid/press-release_IP-16-1907_en.htm)

EU: EC fines Riberebro €5.2 million for participation in canned mushrooms cartel

The EC has found that Spanish canned and fresh vegetable company Riberebro participated in a cartel to coordinate prices and allocate customers of canned mushrooms in Europe for more than a year and has imposed a fine of €5 194 000 on the company. The EC adopted a settlement decision in June 2014 concerning the participation in this same cartel of Bonduelle, Lutèce and Prochamp. Riberebro chose not to settle and consequently the investigation continued under the normal cartel procedure. The cartel concerned canned mushrooms sold in tins and jars for private label sales in the European Economic Area (EEA). These sales are carried out via tender procedures to retailers and food wholesalers such as cash and carry companies, as well as to professional customers such as catering companies.

The overall aim of the cartel was to stabilise their market shares and stop a decline in prices. To achieve this, the cartel members exchanged confidential information on tenders, set minimum prices, agreed on volume targets and allocated customers among themselves. The cartel was a non-aggression pact with a compensation scheme in case of customer transfer and application of minimum prices which had been agreed beforehand. The EC found that Riberebro participated in the cartel from September 10, 2010 until 28 February 2012.The fine was set on the basis of the EC's 2006 Guidelines on fines. The EC took into account, in particular, the company's sales of the products concerned in the EEA, the serious nature of the infringement, its geographic scope and its duration, the appropriate level of deterrence and the company's ability to pay the fine.

(Source: EU Press Release dated April 6, 2016 available at http://europa.eu/rapid/press-release_IP-16-1261_en.htm)

EU: EC to monitor social networks in search for cartel activity

EU regulators may begin to monitor social media to identify individuals involved in illegal price fixing or market sharing. Monitoring social networks is a natural evolution of the EC's existing investigative techniques so in many ways this is not surprising. The announcement also reflects an increasing determination on behalf of the Commission to decrease its reliance on whistle blowers to discover cartels and other anti-competitive activity.

This goal is shared by the UK's competition regulator, which has been vocal about significant investments in its own intelligence gathering functions since its creation in April 2014. However, due to the strict requirements which social media platforms, such as Twitter and Facebook, often require law enforcement agencies to satisfy before releasing private user information, it seems likely that the role of evidence from social media will play a greater role in building a case as opposed to being the initial source for an investigation.

(Source: Out-law.com dated May 12, 2016 available at http://www.out-law.com/en/articles/2016/may/eu-to-monitor-social-networks-in-search-for-cartel-activity/)

UK: The Competition & Markets Authority (CMA) has fined bathroom fittings supplier "Ultra" Finishing Ltd. for preventing retailers from discounting online prices

The fine follows Ultra's admission that it had violated the provisions of competition law and its agreement to pay a fine. CMA announced the application of a discount of 20% from the fine in recognition of efficiencies resulting from Ultra admitting its infringement, failing which the fine would have been to the tune of £1,032,502.

The fine was imposed for Ultra's infringement of competition law in the period between 2012 to 2014. Ultra being engaged in resale price maintenance (RPM) in respect of the internet sales of its Hudson Reed and Ultra branded products. RPM constitutes vertical price-fixing where a supplier restricts the ability of a retailer to set the prices at which it will resell the supplier's products.

Ultra has subsequently agreed to set up a programme to ensure compliance with competition law within its business and among its staff. This includes a clear commitment to competition law compliance by the Ultra Board, including an external statement to that effect, which has been published on Ultra's website. The CMA has applied a further discount of 5% from the original fine for the competition compliance programme. The final fine imposed on Ultra is to the tune of £786,668.

(Source: CMA Press Release dated May 10, 2016 available at https://www.gov.uk/government/news/cma-issues-bathroom-fittings-infringement-decision-and-fine)

II. ABUSE OF DOMINANCE/MARKET POWER

INDIA

COMPAT upholds CCI order dismissing abuse of dominance allegation against Delhi International Airport Limited (DIAL)

COMPAT by its order dated April 12, 2016 has upheld order of CCI which had dismissed allegations of abuse of dominance by DIAL in charging licence fee from airlines using the space allotted to them at Indira Gandhi International Airport, New Delhi.

The Information was filed in CCI by Airline Operators Committee alleging abuse of dominance by DIAL in the relevant market by arbitrarily revising licence fee for the space made available to various airlines operating at IGI Airport. As per the agreement dated December 23, 2013 executed between DIAL and Air France, supplied by the Informant, the licence fee for using the allotted space at IGI Airport was INR 1214.99/sq. mtr. subject to escalation at the rate of 7.5% every year. The said agreement was valid for the period ending March 31, 2015. Upon expiry of the agreement, DIAL sent a notice dated March 03, 2015 to Air France and other airlines that the licence fee for the financial year 2015-16 will be INR 2615.72/sq.mtr.

After about eight months of the above notice, the Airline Operators Committee (New Delhi) filed the case in the CCI. However, the CCI declined to order investigation in the allegation observing that the escalation clause which envisaged increase at the rate of 7.5% every year cannot be invoked by the airlines on expiry of the agreement and the demand of enhanced licence fee post the licence period cannot be termed as unfair.

The COMPAT agreed with the opinion of CCI. The COMPAT noted that prior to April 01, 2015, various airlines were paying different fee for using the spaces allotted to them at IGI Airport. DIAL took a policy decision to uniformly increase the rate from April 01, 2015 so that the airlines were required to pay the same licence fee at the rate of INR 2615.72/sq/mtr. The same cannot be termed as arbitrary or unjust per se. The appeal has been dismissed accordingly.

(Source: Order dated April 12, 2016. For full text see COMPAT website-www.compat.nic.in)

COMPAT rules that IndiGo's predatory recruitment of Air India's trained pilots is not a competition issue but an employment issue

COMPAT by its order dated April 29, 2016 has upheld the CCI order dated February 10, 2016 refusing to intervene in the matter of predatory recruitment of Air India's trained pilot against InterGlobe Aviation Limited. (IndiGo)

In its order, the CCI rejected Air India's allegations against IndiGo for the violation of section 3(3) (b) and (c) and 4(2) (b) of the Competition Act 2002.

Air India alleged that IndiGo is enjoying dominant position in the relevant market of civil aviation (52% of the market share) and has been abusing that position in clear violation of Section 4(2) and further pleaded that the conduct of IndiGo is violative of Section 3(3) (b) and (c) of the Act.

It was alleged that IndiGo has systematically indulged in predatory recruitment of trained pilots of Air India. Air India claimed to have spent a huge amount on training costs to the tune of INR 30 to 35 lacs, depending on the total flying hours to be completed by the pilot as a part of the training received at its institute at Hyderabad.

This predatory recruitment practice was looked into by the Director General of Civil Aviation (DGCA) vide it's letter dated April 07, 2015, mandating all airlines to ensure that pilots hired by them finish required six month notice period. However, IndiGo continued to disregard this direction.

The CCI rejected to entertain the grievance made in the Information filed by the Air India observing that even though a *prima-facie* case can be said to have been made out in favour of Air India Ltd. but the allegations leveled against the Indigo do not seem to raise any competition concern in the market. An airline recruiting another airline's pilots will not bring about structural changes in the operations of the market.

The COMPAT has upheld the order of the CCI with the opinion that although, the CCI did not record detailed reasons for refusing to entertain the grievance made in the information filed by the Air India, such deficiency in the impugned order would not justify interference with the COMPANT because Air India, except making bald allegations did not place cogent material before the Commission to enable it to draw an inference that IndiGo has resorted to predatory hiring of pilots, who have deserted the parent airlines in complete violation of the conditions of agreement and instructions issued by DGCA vide circulars dated October 27, 2009 and April 7, 2015.

The COMPAT held that Air India should have placed some tangible evidence on record to prima facie show that IndiGo had in fact indulged in predatory hiring of pilots already serving other airlines and, thereby, affected the flying operations of the particular airlines, which could be treated as abuse of dominant position within the meaning of Section 4(2) or violation of Section 3(3)(b) and (c) of the Act because that may have amounted to limiting the provision of services or the market.

COMPAT dismissed the appeal and noted that if Air India is able to gather material to support its case against IndiGo that it has acted in violation of Section 3 and/or 4, then it shall be free to file fresh case to enable the CCI to consider the desirability of ordering an investigation into the matter under Section 26(1) of the Act and the impugned order shall not operate as a bar to the consideration of fresh information.

(Source: Order dated April 29, 2016. For full text see COMPAT website-www.compat.nic.in)

COMPAT sets-aside penalty of INR 1,773 Crores penalty on Coal India Limited (CIL) by CCI

COMPAT by its order dated May 17, 2016 has set aside CCI's order dated April 15, 2014 wherein CCI had fined Coal India Limited for imposing unfair and discriminatory conditions in its fuel supply agreements with various customers.

COMPAT considered whether the orders passed by CCI are vitiated due to violation of the principles of natural justice, i.e., one who hears must decide.

In one of the appeals, it was alleged that the CCI comprising the Chairperson, Mr. Ashok Chawla and three Members namely – Dr. Geeta Gouri, Mr. Justice (Retd.) S. N. Dhingra and Mr. S. L. Bunker heard the arguments on July 16 and 17, 2013. However, the final order was passed on December 9, 2013 by the CCI comprising the Chairperson, Mr. Ashok Chawla and five Members namely – Dr. Geeta Gouri, Mr. Anurag Goel, Mr. M.L. Tayal, Mr. Justice (Retd.) S.N. Dhingra and Mr. S.L. Bunker (Mr. Anurag Goel and Mr. M. L. Tayal were not party to the hearing held on July 16 and 17, 2013) whereby penalty @ 3% of the average turnover of preceding three years total amounting to INR 1773.05 crores was imposed on CIL. Similar allegations were also made in the connected appeals.

COMPAT disagreed with the CCI's contention that the CCI functions as an executive/administrative body and is thus not bound by the principles of natural justice and fairness. It reiterated the Supreme Court's position that the functions performed by the bodies like the CCI which are clothed with the power to decide the rights of the parties or pass order adversely affecting a person are quasi-judicial in nature and are bound to comply with different facets of the principles of natural justice.

Thus COMPAT allowed the appeals and remitted the matters to the CCI for deciding the issues arising out of the information filed by Maharashtra State Power Generation Company Limited, Gujarat State Electricity Corporation Limited, Madhya Pradesh Power Generating Corporation Limited, West Bengal Power Development Corporation Limited, Sponge Iron Manufacturers Association and GHCL Ltd. afresh. The CCI has been directed to dispose-off the matters within 2 months.

(Source: Order dated May 17, 2016. For full text see COMPAT website-www.compat.nic.in)

INTERNATIONAL

EU: EC sends Statement of Objections to Google on Android Operating System

The EC informed Google holding more than 90% of shares in the relevant markets in the European Economic Area (EEA) of its view that the company has, in breach of EU antitrust rules, abused its dominant position by imposing restrictions on Android device manufacturers and mobile network operators.

The EC opened proceedings in April 2015, against Google and alleged that Google has implemented a strategy on mobile devices to preserve and strengthen its dominance in general internet search. First, Google Search is pre-installed and set as the default, or exclusive, search service on most Android devices sold in Europe. This practice appears to close off ways for rival search engines to access the market, via competing mobile browsers and operating systems. In addition, it also harms consumers by stifling competition and restricting innovation in the wider mobile space.

Thereby, the EC considers Google in a dominant in the markets for general internet search services, licensable smart mobile operating systems and app stores for the Android mobile operating system.

The investigation highlighted that in its contracts with manufacturers, Google has made the licensing of the Play Store on Android devices conditional on Google Search being pre-installed and set as default search service. As a result, rival search engines are not able to become the default search service on the significant majority of devices sold in the EEA. Google has granted significant financial incentives to some of the largest Smartphone and tablet manufacturers as well as mobile network operators on condition that they exclusively pre-install Google Search on their devices, thereby, reduced the incentives of manufacturers and mobile network operators to pre-install competing search services on the devices they market. According to the EC this conduct of Google harms consumers because they are not given as wider a choice as possible and because it stifles innovation.

(Source EU Press Release dated April 20, 2016 available at http://europa.eu/rapid/press-release_IP-16-1492_en.htm)

III. COMBINATION

CCI approves PVR's acquisition of DLF's cinema exhibition business with modifications

CCI, by its order dated May 04, 2016, has approved acquisition of DLF's film exhibition business, subject to modifications. The proposed combination relates to acquisition by PVR of DLF Utilities Limited (DUL) film exhibition business comprising of 39 screens (29 existing and 10 upcoming) as a going concern on a slump sale basis.

PVR is engaged in the business of developing, operating and managing cinema theatres across India. It has 467 screens in 43 cities across India. DUL, part of DLF Group, is engaged in, inter alia, operating and maintaining cinema. At present DUL has 29 screens in Delhi, Gurgaon and Chandigarh and is in the process of developing 10 more screens in Delhi and Noida.

The CCI considered that the proposed combination is likely to cause appreciable adverse effect on competition (AAEC) in the markets of (i) Gurgaon, (ii) South Delhi, (iii) North, West and Central Delhi, (iv) Noida, and (v) Chandigarh. PVR was accordingly asked to publish details of the proposed combination to bring to the knowledge of the public and persons affected or likely to be affected by such combination.

As regards the relevant product market, the CCI considered that multiplexes and single screen theatres do not compete with each other as the multiplexes have the advantage of offering greater choice of films to the consumer. Multiplexes also cater to higher paying customers, and offer additional facilities such as shopping area, fast food centers and recreational facilities. However, high-end single screen theatres like PVR Rivoli, PVR Plaza, Delite Cinemas, M Cinemas, and DT Savitri offer some facilities of multiplexes and at comparable price to multiplex theatres. As such, they provide some competition to multiplex theatres. Thus, for the purposes of the said combination the relevant product market was considered as the "market for multiplex theatres and high-end single screen theatres".

As regards the geographic market, the CCI observed that the consumer prefer to view films in nearby areas and would choose among the available nearby theatres. Thus the Delhi NCR market can be divided into the following distinct geographic markets. Viz. South Delhi, North, West & Central Delhi, East Delhi, Gurgaon, Ghaziabad, Faridabad, NOIDA and Greater NOIDA.

Assessment of AAEC

(i) Chandigarh

The CCI noted that in Chandigarh, the post combination market share would be 36.7% with an increment of 6.7%. When upcoming market entries are taken into account, the incremental market share is only 5.2% which is not significant. Further, there are a number of competitors with significant market share in Chandigarh. Hence the proposed combination is not likely to have AAEC in the market of Chandigarh.

(ii) North, West and Central Delhi

The CCI noted that in North, West and Central Delhi, the post combination market share would be 53.3% with an increment of 6.6%. When upcoming market entries are taken into account, the incremental market share is 5.1% which is not significant. Further, there are a number of competitors with significant market share in Chandigarh. Hence the proposed combination is likely to have AAEC in the market of North, West and Central Delhi.

(iii) NOIDA

The CCI noted that in NOIDA, the post combination market share would be 53.6% with an increment of 10.1%., which is significant. Further, the next biggest competitors have a market share of 14.5% and 13%, respectively, and hence may not constitute adequate competitive constraint. Further, any efficiencies being claimed through the combination are not because of the combination. There is a likelihood that the combination would result in sustained/significant increase in competitive prices in the absence of effective competition. The CCI was of the view that the proposed combination is likely to have AAEC in this relevant market.

PVR submitted a commitment that it shall terminate its agreement with International Recreation Parks Pvt. Ltd. For the development of a multiplex with 15 screens in Garden Galleria Mall, NOIDA which is scheduled to be completed by 2017. PVR shall also not acquire any direct or indirect influence/ownership over Garden Galleria for a period of five years from the date of termination of notice as above. PVR shall not open any new screens for a period of 3 years from the date of completion of the proposed combination in the market of NOIDA.

Following the commitments, the CCI was of the opinion that the competition concerns in the relevant market would be adequately alleviated.

(iv) Gurgaon

The CCI noted that in Gurgaon, the post combination market share would be 63.2% with an increment of 21.1%., which is significant. Further, the next biggest competitors have a market share of 16.4% and 14.8%, respectively, and hence may not constitute adequate competitive constraint. Further, any efficiencies being claimed through the combination are not because of the combination.

There is a likelihood that the combination would result in sustained/significant increase in competitive prices in the absence of effective competition. The CCI was of the view that the proposed combination is likely to have AAEC in this relevant market.

PVR submitted a commitment that it shall terminate its agreement with Reach Promoters Pvt. Ltd. For the development of a multiplex with 7 screens in Airia Mall, Gurgaon which is scheduled to be completed by 2017. PVR shall also not acquire any direct or indirect influence/ownership over a Airia Mall, Gurgaon for a period of five years from the date of termination of notice as above. PVR shall not open any new screens for a period of 3 years from the date of completion of the proposed combination in the market of Gurgaon.

Following the commitments, the CCI was of the opinion that the competition concerns in the relevant market would be adequately alleviated.

(v) South Delhi

The CCI noted that in South Delhi, the post combination market share would be 79.4%% with an increment of 41.2%., which is significant. Further, the next biggest competitor shall have a market share of 12.5%, respectively, and hence may not constitute adequate competitive constraint. Further, any efficiencies being claimed through the combination are not because of the combination. There is a likelihood that the combination would result in sustained/significant increase in competitive prices in the absence of effective competition. The CCI was of the view that the proposed combination is likely to have AAEC in this relevant market.

PVR submitted behavioral commitments such cap on ticket prices, cap on food and beverage prices, quality commitments, expansion freeze and commitment with distributors. However, the CCI by its majority opinion held that the behavioral commitments offered would not adequate to alleviate competition concerns from this relevant market. Further, such behavioral commitments would be difficult to formulate, implement & monitor & run the risk of creating market distortions. The majority opinion of the CCI held that the competition concerns would only be alleviated if PVR is asked to divest the screens belonging to DUL.

The commitments accepted by the CCI include divestiture of DT Savitri and DT Saket assets from the scope of the proposed combination. PVR shall also not acquire any direct or indirect influence/ownership over DT Saket and DT Savitri assets for a period of five years. PVR shall not open any new screens for a period of 5 years from the date of completion of the proposed combination in the market of South Delhi. Following the commitments, the CCI was of the opinion that the competition concerns in the relevant market would be adequately alleviated.

The proposed combination has accordingly been approved, subject to the commitments as offered above.

(Source: CCI Order dated May 04, 2016. For full text see CCI website)

CCI penalizes General Electric (GE) for failure to notify its proposed acquisition of equity stakes in Alstom

CCI by its order dated February 16, 2016 has penalized GE Energy Europe B.V., GE and GE Industrial France SAS (collectively, the "Acquirers") for failure to notify a proposed combination in terms of Section 6(2)(b) of the Competition Act, 2002(Act) read with Regulation 5(8) of the Competition Commission of India(Procedure in regard to the transaction of business relating to combination) Regulation, 2011 ("Combination Regulations").The proposed combination relates to acquisition of up to 26% of the total paid-up equity share capital of Alstom India Limited and acquisition of up to 25% of the total paid-up equity share capital of Alstom T&D India Limited (collectively "Targets").CCI took suo-moto cognizance of the two public announcements ("PAs") dated May 5, 2014 made by Acquirers in pursuance to the relevant provisions of the Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulations, 2011 ("Takeover Regulations"). The CCI was of the view that the Acquirers were required to give notice within 30 days of the PAs, i.e., June 4, 2014.

The CCI noted that Section 6(2)(b) read with Regulation 5(8) of the Combination Regulation, 2011 provide three conditions to be satisfied:

1. The Acquirers has an intention to acquire shares in the Targets;
2. The Acquirers communicated such intent to a Statutory Authority/Central Govt./State Govt.
3. The Acquirers failed to give notice to the CCI within thirty days of communication of such intent to SEBI.

The CCI noted that the intent to acquire would include unilateral measures such as PAs under the Takeover Regulations. Further, the PAs would constitute a "communication" within the purview of second proviso to Regulation 5(8) of the Combination Regulations. That the Acquirers failed to give notice to the CCI within 30 days of the publishing of the PAs would constitute violation of Section 6(2) of the Act. In terms of Section 43A of the Act, the CCI can levy a maximum penalty of 1% of the combined value of worldwide assets of the parties to the proposed combination. While determining the quantum of penalty, the CCI considered (a) the bona-fide conduct of the Acquires as regards the intent to file the notice, albeit after the expiry of statutory timelines; and (b) the fact that the combination was not consummated by the Acquirers without the approval of the CCI. The CCI imposed a penalty of INR 5 Crore on the Acquirers.

(Source: Order dated February 16, 2016. For full text see CCI website)

INTERNATIONAL

Pakistan: Competition Commission of Pakistan (CCP) gives conditional approval to MOBILINK-Warid merger

The CCP by its order dated March 18, 2016 has approved the proposed merger of Mobilink and Warid. The merger approval is conditional upon compliance with the remedies imposed by CCP. The Commission undertook the analysis of the merger to determine if it substantially lessens competition by creating or strengthening a dominant position. The assessment has been undertaken on the basis of extensive consultation with the merger parties, competitors and the Pakistan Telecommunication Authority (PTA).

It was noted that the merger raised competition concerns, which were alleviated by countervailing factors and efficiencies. The CCP identified some persisting concerns in areas of spectrum concentration, infrastructure sharing, non-compete obligations, and joint control for which conditions have been imposed. In relation to the spectrum concentration, the CCP has made spectrum sharing obligatory upon determination of inefficiently/underutilized capacity by PTA. With respect to infrastructure sharing, the CCP has directed the parties to provide guest operators on their cell sites a first option to buy the site, directly or through an auction if there is more than one guest operator. The remedies imposed on VimpelCom and Telenor Group by virtue of the CCP's order dated 17 March 2011 to address the issue of joint control have been further strengthened through appointment of a third party reviewer who will report independent assessment of compliance to the Commission.

(Source: CCP Press Release dated March 21, 2016 available at http://www.cc.gov.pk/index.php?option=com_content&view=article&id=449&Itemid=137&lang=en)

EU: EC conditionally approves container liner shipping merger between CMA CGM and NOL

The EC has cleared under the EU Merger Regulation the proposed acquisition of Neptune Oriental Lines ("NOL") of Singapore by rival CMA CGM, a French shipping company with worldwide activities. However, the clearance is conditional upon NOL leaving the G6 liner shipping alliance. The EC examined the effects of the merger on competition for container liner shipping services on seventeen trade routes connecting Europe with the Americas, the Middle East, the Indian Subcontinent, the Far East as well as Australasia & Oceania. The EC found that the merger, as initially notified, would have created new links between previously unconnected consortia in the O3 and G6 alliances. The EC had concerns that these potential new links would have resulted in anti-competitive effects on two trade routes: (i) between Northern Europe and North America, and (ii) between Northern Europe and the Middle East. On these routes, competition from liner shippers who have no connection with the merged entity or its alliance partners would have been insufficient. As a result, the transaction could have enabled the merged entity, through the consortia that the two companies belong to, to influence capacity and therefore prices to the detriment of shippers and consumers for a very large part of those markets. Thus in order to address these concerns, the companies offered to make the transaction contingent upon the removal of the link that would have been created between CMA CGM's O3 Alliance and NOL's G6 Alliance. Although NOL will continue to operate for G6 until 31 March 2017 to guarantee an orderly exit, the commitments foresee that a trustee will ensure that no anti-competitive information is shared between the alliance and the merged entity during that remaining period. This will eliminate the potential additional links between previously unrelated consortia that the merger would have created on the two routes. In view of the remedies proposed, the Commission concluded that the proposed transaction, as modified, would no longer raise competition concerns. The decision is conditional upon full compliance with the commitments. The transaction was notified to the Commission on March 8, 2016.

(Source: EU Press release dated April 29, 2016 available at http://europa.eu/rapid/press-release_IP-16-1631_en.htm)

EU: EC opens in-depth investigation into Wabtec's proposed takeover of railway equipment manufacturer Faiveley

The EC has opened an in-depth investigation to assess whether the proposed acquisition of Faiveley Transport of France by Westinghouse Air Brake Technologies Corporation ("Wabtec"), a US-based company is in line with the EU Merger Regulation. The EC has concerns that the proposed takeover may reduce competition for railway equipment systems and subsystems in the European Economic Area ("EEA"). The EC has concerns regarding a number of markets for railway equipment systems and subsystems, particularly, in respect of the supply of complete brake systems and various brake components, such as friction materials, as well as pantographs. These markets have high entry barriers due to the important technical and regulatory requirements applicable to safety-critical train equipment, such as brake systems. Significant investment in research and type approval of new products is therefore required to enter or quickly expand in these markets. The investigation shows that the proposed merger would remove a significant competitor from an already concentrated market. At this stage, the EC has concerns regarding the remaining manufacturers that would be unable to sufficiently compete with and constrain the merged entity to ensure continued innovation and avoid price increases for customers. The EC will now investigate in-depth the proposed transaction to determine whether these initial concerns are confirmed. The transaction was notified to the EC on April 4, 2016.

(Source: EC Press Release dated May 12, 2016 available at http://europa.eu/rapid/press-release_IP-16-1722_en.htm)

USA: Halliburton and Baker Hughes call off $35 billion merger

Halliburton and Baker Hughes, two big oil field services companies, had been focused on their $35 billion merger for the past one and a half years. The two companies announced the termination of their merger after an excruciatingly long regulatory review process that culminated in a lawsuit last month by the Justice Department to block the deal on antitrust grounds. Halliburton claimed that while both companies expected the proposed merger to result in compelling benefits to shareholders, customers and other stakeholders, challenges in obtaining remaining regulatory approvals and general industry conditions that severely damaged deal economics led to the conclusion that termination is the best course of action. The two companies were seeking to band together to compete with the likes of Schlumberger and to erase billions in costs related to operations and research and development. Soon after the deal was signed in November 2014, oil prices sank to their lowest levels in years, a burden that has affected the entire industry.

(Source: The New York Times dated May 1, 2016 available at http://www.nytimes.com/2016/05/02/business/dealbook/halliburton-and-baker-hughes-call-off-35-billion-merger.html)

EU: EC prohibits Hutchison's proposed acquisition of TELEFÓNICA UK

The EC By its order dated May 11, 2016 has blocked the proposed acquisition of O2 by Hutchison under the EU Merger Regulation. It had concerns that UK mobile customers would have had less choice and paid higher prices as a result of the takeover, and that the deal would have harmed innovation in the mobile sector. The Commission had serious concerns that the takeover would have reduced competition in the market, hampered the development of the UK mobile network infrastructure as well as the ability of mobile virtual operators to compete. The takeover would have eliminated competition between two strong players in the UK mobile market. The merged entity would have been part of both network sharing arrangements, MBNL and Beacon. It would have had a full overview of the network plans of both remaining competitors, Vodafone and EE. Its role in both networks would have weakened EE and Vodafone and hampered the future development of mobile infrastructure in the UK. The transaction would have reduced the number of mobile network operators willing to host other mobile operators on their networks, leaving prospective and existing mobile virtual operators in a weaker negotiating position to obtain favorable wholesale access terms. Further ,even the remedies proposed by Hutchison failed to adequately address the serious concerns raised by the takeover. The proposed remedies did not resolve the structural problems created by the disruption to the current network sharing agreements in the UK. They were also not capable of replacing the weakened competition in the retail and wholesale mobile telecoms markets as a result of the takeover.

(Source: EU Press Release, dated May 11, 2016, available at http://europa.eu/rapid/press-release_IP-16-1704_en.htm)

EU: Commission conditionally clears AB InBev/SABMiller deal

The European Commission has cleared under the EU Merger Regulation the proposed acquisition of SABMiller, the world's second largest brewer, by AB InBev, the world's largest brewer. The clearance is conditional on AB InBev selling practically the entire SABMiller beer business in Europe. The Commission had concerns that the transaction, as initially notified, could have led to higher beer prices in Member States where SABMiller is currently active, because it would have removed an important competitor and made tacit co-ordination between the leading international brewers more likely. By offering to divest practically all of SABMiller's beer business in Europe, AB InBev has addressed these concerns. In view of the remedies proposed, the Commission concluded that the proposed transaction, as modified, would no longer raise competition concerns. Indeed, following the transaction, the intensity of competition in the European beer market will remain unchanged. The transaction was examined under the normal merger review procedure.

(Source: EU Press Release dated May 24, 2016 available at http://europa.eu/rapid/press-release_IP-16-1900_en.htm)

IV. MISCELLANEOUS

INDIA

Former CBDT chief Anita Kapur appointed as a Member of Competition Appellate Tribunal

Former chairperson of Central Board of Direct Taxes (CBDT), Ms. Anita Kapur has joined the COMPAT as a member. She assumed the office on May 10, 2016. Ms. Anita Kapur, an Indian Revenue Service officer(1978), has retired as the chairperson of the CBDT. She was also an Adviser on Tax Reforms with the Ministry of Finance, Government of India. She has held varied assignments in the Tax Department including tax assessor, representative of the tax department for arguing tax cases before the Income Tax Appellate Tribunal (ITAT), Appellate Authority to adjudicate first level tax appeals and supervision and performance monitoring of a tax office.

(Source: The Economic Times, available at http://articles.economictimes.indiatimes.com/2016-05-05/news/72859182_1_compat-competition-appellate-tribunal-anita-kapur and COMPAT website)

CCI celebrated its 7th anniversary on May 20, 2016

CCI celebrated its 7th Annual Day on May 20, 2016 on completion of seven years of competition enforcement on May 20, 2016, since the enforcement of key provisions (Section 3 and 4) on May 20, 2009 of the Competition Act, 2002. In the last seven years, CCI has dealt with more than 700 cases of anti-competitive agreements and abuse of dominant position in diverse fields including cement, real estate, steel and coal. Shri Arun Jaitley, Hon'ble Minister for Finance, Corporate Affairs and Information and Broadcasting delivered the Annual Day lecture on "Competition, Regulator and Growth".Speaking on the event, Justice (Retd.) Shri G. S. Singhvi, Chairman, COMPAT, who was the Guest of Honor, said that the power and duties conferred on CCI is enormous and need to be exercised carefully. He appreciated the role of CCI for developing a sustainable jurisprudence He also noted that competition law as a subject is gaining popularity in law schools.

Furthermore, CCI's Chairman D K Sikri said that the Commission is working to improve the quality as well as reduce the time taken for completion of anti-trust investigations. Acknowledging the regulator's challenges, including procedural and jurisdictional issues, he said that the endeavor is to base the decisions on "sound economics".

(Source: CCI Press Release dated May 20, 2016)

INTERNATIONAL

EU: Digital Single Market: EC takes action on e-commerce, audiovisual media rules and online platforms

The EC made an important step towards a Digital Single Market. The EC has tabled a three-pronged plan to boost e-commerce by tackling geoblocking, making cross-border parcel delivery more affordable and efficient and promoting customer trust through better protection and enforcement. Furthermore, the EC has proposed an update of EU audiovisual rules to create a fairer environment for all players, promote European films, protect children and tackle hate speech better. Andrus Ansip, Vice-President for the Digital Single Market, said: "*All too often people are blocked from accessing the best offers when shopping online or decide not to buy cross-border because the delivery prices are too high or they are worried about how to claim their rights if something goes wrong. We want to solve the problems that are preventing consumers and businesses from fully enjoying the opportunities of buying and selling products and services online. We also want online platforms and the audiovisual and creative sectors to be powerhouses in the digital economy, not weigh them down with unnecessary rules. They need the certainty of a modern and fair legal environment: that is what we are providing today.*"

(Source: EC Press Release dated May 25, 2016 available at http://europa.eu/rapid/press-release_MEX-16-1909_en.htm)

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