Competition News Bulletin

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Inside...

I. CARTELS AND ANTI-COMPETITIVE AGREEMENTS

INDIA

Competition Commission of India (CCI) passes cease and desist order against Sonipat Distributor (FMCG) Association

CCI in its order dated October 12, 2015 found Sonipat Distributor ("FMCG") Association ("SDA") contravening the provisions of section 3(3)(b)& (c) of the Competition Act, 2002 (Act). CCI, while passing the "cease and desist" orders against SDA holding them guilty observed that being an association of its constituent enterprises, the association is taking decisions relating to distribution of FMCG products on behalf of the members who are engaged in similar or identical trade of goods. Such an association of enterprises are covered within the scope of section 3(3) of the Act. Further, bye-laws of the association indicate that the members of SDA by agreeing to bye-laws have disturbed the forces of free trade and limited competition amongst the distributors of FMCG products in the area of Sonipat.

Since under the regulations of the association, it is mandatory for each distributor and retailer to become a member of the said association. No new stockist/ distributor is appointed by drugs and pharmaceutical companies unless the person desirous of becoming a stockist/ distributor becomes member of the said association and gets "No Objection Certificate" (NOC) from the old dealer in the proforma issued by the association. The bye-laws provide for a penalty of INR 2500/- on a new distributor if he fails to obtain NOC from an existing dealer. The requirement to obtain NOC by a newly appointed distributor before starting of a business creates entry barriers besides limiting and controlling the supply of services. Besides, the association also imposed areas of distribution upon the members doing business and imposed penalties for not adhering to one's area of distribution. It is apparent that such bye-laws besides limiting/ controlling the supplies also allocated the markets and cause appreciable adverse effect on competition under section 3(3)(b) and section 3(3)(c) of the Act. The prerequisite of NOC by SDA forecloses the competition by hindering entry of new players in the market and SDA has also ensured that the dealers have exclusive area of supply and thereby restricted competition. Such practices primarily stop the distributor from selling products outside the area allocated to it. Therefore, CCI held that the activities of the SDA are in contravention of the provisions of the Act and directed its office bearers to cease and desist from indulging in such activities and further directed the SDAto modify its bye-laws so as to bring the same in accord with the provisions of Act. The CCI also directed SDA to implement, in letter and

spirit, a "Competition Compliance Manual" to educate its members about the basic tenets of competition law principles. The CCI decided not to impose penalty since the SDA had stopped the practice of NOC since the case was filed in the CCI.

(Source: Order dated October 12, 2015. For full text see CCI website-www.cci gov.in)

Competition Appellate Tribunal set asides the penalty imposed by CCI against Andhra Pradesh Film Chamber of Commerce

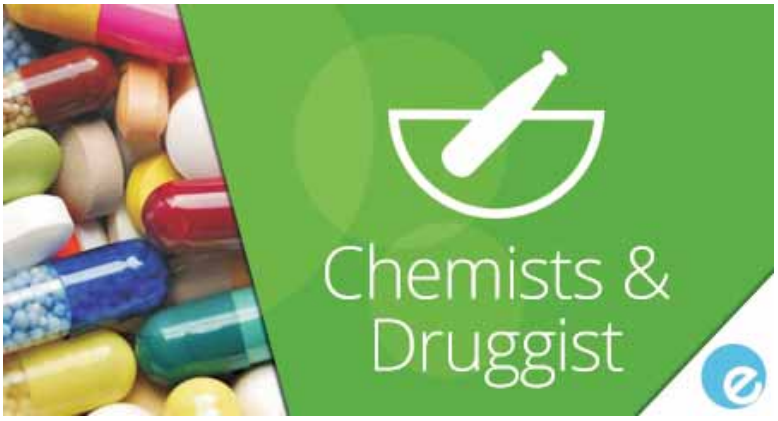
Competition Appellate Tribunal ("COMPAT")in its judgment dated October 14, 2015 set aside the penalty of INR 12.89 lacs imposed by CCI on Andhra Pradesh Film Chamber of Commerce (Appellant). In the case filed by Cinergy Independent Film Service Pvt. Ltd., CCI had held that the Appellant was restricting exhibition of film "Mausam" produced by the Informant, as the Informant had owed certain amounts to a member of Appellant. The Appellant forcing its member to abide by its unfair rules and dictates. Certain rules as framed by Appellant were found in violation of Section 3 of the Act as they were limiting and restricting the rights of producers for a period of three years from the date of obtaining Censor Certificate to distribute movies to TV channels and electronic media to telecast.

However, the Hon'ble COMPAT while setting aside the penalty observed that , there was no evidence produced by the Respondents to prove that the Appellant had prevented or obstructed the release of film 'Mausam' on the scheduled date. In fact, the only evidence available to CCI was the letter dated 09.09.2011 sent by a member of Appellant to various parties including the Appellant complaining against the non-payment of outstanding dues in respect of another film("Rann"). Appellant had forwarded the letter to various associations and Cinergy to settle the issue to avoid any inconvenience before the release of the film "Mausam".

There was no evidence produced by Cinergy to prove that the Appellant had prevented or obstructed the release of film "Mausam". COMPAT observed that CCI which was expected to objectively and independently analyse the facts and evidence collected by the DG during the course of investigation abdicated its duty and mechanically approved the findings recorded by the DG. COMPAT set aside the CCI order, which the COMPAT opined was based on assumptions and not on evidences. Further, COMPAT was of the view that the exercise undertaken by the DG to go into the validity of the said rules was per se without jurisdiction because the informant had not questioned the rules on the ground that the same are anti-competitive and thus ultra vires the provisions of the Act.

(Source: COMPAT: Order dated October 14, 2015; http://blog.scconline.com/ for full text see COMPAT website).

Competition Appellate Tribunal sets aside the penalty imposed by CCI against Chemist and Druggist Association, Ferozepur



COMPAT by its judgment dated 30 October 2015 over-ruled the order penalizing Chemist and Druggist Association, Ferozepur, Punjab in a case filed by Arora Medical Hall, Ferozepur, Punjab.

Arora Medical Hall (the Informant) was the largest wholesale dealer of drugs manufactured by several pharmaceutical companies in Ferozepur. Informant had alleged that the Association had issued circulars to boycott the Informant following allegations made by the member of the Associations that the Informant had indulged in malpractices against the members of Association and issued them inflated bills for orders placed on the Informant by the members of the Association. The Informant also alleged that the Association forced any new wholesaler/retailer to procure an NOC from the Association before it could commence business in the area of Ferozepur and surrounding areas.

The report of the Director General (DG) as well as the Commission considered the above allegations and found the conduct of the Association violating Section 3(3)(b) of the Act, on the basis of the allegations, replies filed by the Association and the pharmaceutical companies as well as an undated affidavit of a partner of the Informant.

The COMPAT noted that, firstly, the Association was not the apex association in the district of Ferozepur and neighboring areas. Various other associations and wholesalers and distributors operated in the district of Ferozepur and neighboring areas, without the membership of Informant. The biggest example of the same was the Informant itself who, despite being expelled by the Association, had stated itself to the biggest wholesaler in Ferozepur.

COMPAT noted that the CCI failed to take into account that the Informant was expelled from the membership of the Association because of its own highhandedness and unethical conduct of charging inflated bills to the members of the Association. In fact, the Informant had already filed a case against the Association against the same in the District Court of Ferozepur but had the same was dismissed with costs for failure to prosecute by the Informant. Further, despite the allegations that the Informant lost revenue due to the boycott by the Association, the DG failed to note that the revenue of Informant from the neighboring Fazilka region had rose 100% since the expulsion. The Association had also submitted that the Informant's revenue in Ferozepur area dwindled only as a result of its own conduct.

As regards the practice of NOC, the COMPAT noted that the same was not mandatory by the Association. Those stockists who did not want to take NOC/LOC from the Association did so from the associations in neighboring areas and freely operated in Ferozepur. The DG had conducted the investigation with a pre-determination to return a finding of violation of section 3(3)(b) of the Act. In doing so, he ignored the replies filed by majority of the pharmaceutical companies that the Association had not imposed a condition of mandatory procurement of NOC. The DG based his entire finding on the basis of an undated affidavit of the Informant, which he did not even present to the Association to defend against. No opportunity of cross-examination of the Informant was provided to the Association. The CCI mechanically approved the finding of the DG on the issue of violation of section 3(3)(b).

The conduct of the DG as well as the CCI amounted to violation of principles of natural justice. After the CCI had sent the reports (main as well as supplementary) to the Appellants, they filed detailed objections to the findings recorded by DG including the one that the concerned officer had acted in blatant disregard to the rules of natural justice and fairness and had omitted to consider the relevant documents and material. Unfortunately, the CCI did not objectively deal with the objections taken by the appellants and did not advert to the unequivocal stand taken by the eight out of ten pharmaceutical companies that NOC/LOC was not mandatory for appointment of a distributor in district Ferozepur. Resultantly, the CCI arbitrarily concluded that the action taken by the Association amounted to violation of section 3(3)(b) of the Act. The Appeals were allowed and the order of the CCI has been set-aside.

(Source: COMPAT: Order dated October 30, 2015; For full text see COMPAT website)

INTERNATIONAL

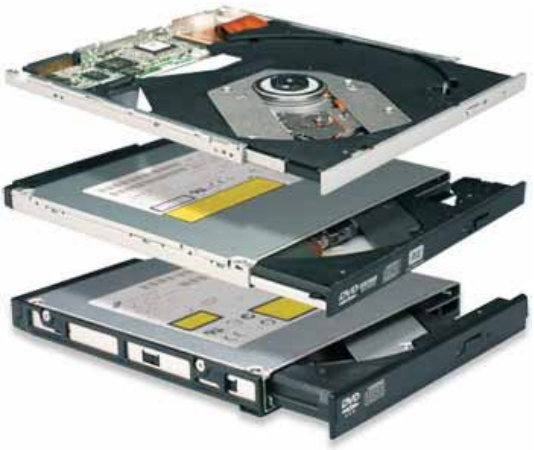
United Kingdom: Competition and Markets Authority (CMA) sentenced the Managing Director of Franklin Hodge Industries in the galvanised steel tanks cartel for 6 months imprisonment

UK's competition regulator, the Competition and Markets Authority(CMA)on September 14, 2015, sentenced Mr. Nigel Snee, the former Managing Director of Franklin Hodge Industries, for 6 months imprisonment, who pleaded guilty to the cartel offence in January 2014, followed by his offences of dishonestly agreeing with others to fix prices, dividing up customers and rig bids between 2005 and 2012 in respect of the supply in the UK of "galvanised steel tanks" for water storage. The sentencing hearing followed a criminal cartel investigation by the CMA. Mr Snee cooperated with the investigation and, after pleading guilty to the cartel offence in January 2014, was a witness for the CMA at the subsequent trial of two further individuals, who were acquitted in June 2015.

Taking into account Mr .Snee's early guilty plea, his personal mitigation and the extent of his voluntary cooperation as a witness, the Judge reduced his sentence by the "higher end" discount of 75%, and concluded that it was appropriate in the circumstances of this case for the resulting 6 month sentence to be suspended.

(Source: CMA: Press Release dated September14, 2015. Available at: https://www.gov.uk/government/news/director-sentenced-to-6-months-for-criminal-cartel)

European Union: European Commission fines suppliers of optical disc drives € 116 million for bid-rigging cartel



The European Commission has fined eight optical disc drive suppliers, a total of €116 million for having coordinated their behaviour in relation to procurement tenders organised by two computer manufacturers, in breach of EU antitrust rules. Optical disc drives ("ODDs") read or record data stored on optical disks, such as CDs, DVDs or Blu-ray. They are used for instance in personal computers, CD and DVD players and video game consoles. The anti-competitive conduct subject to fines in this case concerns agreements to collude in procurement tenders for ODDs for laptops and desktops produced by Dell and Hewlett Packard (HP).Eight suppliers engaged in the illegal practices covered by this decision, namely Philips, Lite-On, their joint venture Philips &Lite-On Digital Solutions, Hitachi-LG Data Storage, Toshiba Samsung Storage Technology, Sony, Sony Optiarc and Quanta Storage. Under the Commission's 2006 Leniency Notice, Philips, Lite-On and their joint venture Philips &Lite-On Digital Solutions received full immunity from fines as they were the first to reveal the existence of the cartel.

The Commission's investigation revealed that between June 2004 and November 2008, the aforesaid contravening companies participated in the cartel by communicating to each other their intentions regarding bidding strategies, shared the results of procurement tenders and exchanged other commercially sensitive information concerning ODDs used in laptops and desktops. They organised a network of parallel bilateral contacts that pursued a single plan to avoid aggressive competition in procurement tenders organised by Dell and HP. Although the cartel contacts took place outside of the European Economic Area (EEA), they were implemented on a worldwide basis. Of the companies involved in the cartel, only Philips is headquartered in Europe. The remaining seven are headquartered in Asia. The duration of each company's involvement in the cartel varied and ranged from less than a year to over four years. In setting the level of fines, the Commission took into account, in particular, the companies' sales of the products concerned in the EEA, the serious nature of the infringement, its

geographic scope and its duration. The fines achieve an appropriate level of deterrence while remaining proportional to the infringement. Philips, Lite-On and Philips &Lite-On jointly received full immunity from fines as they were the first to reveal the cartel to the Commission, thereby avoiding an aggregate fine of € 63.5 million. Hitachi-LG Data Storage received a 50% reduction on its fine for its cooperation in the investigation under the Commission's leniency programme and partial immunity for enabling the Commission to establish a longer duration of the cartel. In setting the fines, the Commission also took account of the fact that Philips, Sony and Sony Optiarc took part in the cartel behaviour only with regard to procurement tenders organised by Dell. However, the rest of the aforesaid contravening companies were penalised.

(Source: European Commission: Press Release dated October 21, 2015)

II. ABUSE OF DOMINANCE/MARKET POWER

INDIA

CCI closes case against Tamil Nadu Arasu Cable TV Corporation Ltd.

CCI by its order dated September 29, 2015 has closed the case against Tamil Nadu Arasu Cable TV Corporation (OP), for alleged indulging in unfair and discriminatory practices with regard to collection of carriage fee from satellite channels.

The Information was filed by Makkal Tholai Thodarpu Kuzhumam Ltd, which runs Makkal TV (Informant).It was alleged that OP who is a multi-system operator (MSO) moved the Informant channel from S-4 to U-40 band because of the negative news coverage by the channel against the State government. S-4 band is prime band while U-40 is a low frequency one and due to the shifting, the Informant's channel was not seen in most parts of its network in rural areas. According to the Informant, for the slot, which was offered free of cost for over three years, OP asked for a carriage fee of Rs 62.02 lacs and service taxes per month.

CCI observed that the MSOs incur various expenses and floating of the tender by OP to augment its revenue can neither be termed as unfair or discriminatory in any manner. The demand of carriage fee by the OP for allotting the desired slot for Informant is neither unfair nor discriminatory. CCI, while exonerating OP observed that "It cannot be said that the informant and other free-to-air channels that use the infrastructure provided by MSOs collect revenues from the advertisers and, as such, the insistence by the informant claiming free ride upon the infrastructure deployed by the opposite party, is thoroughly misconceived". The carriage fee was not arbitrary as it was arrived at through a competitive bidding process, in which the Informant did not even participate.

(Source: CCI: Order dated September 29, 2015. For full text see CCI website)

CCI closes case against Jaiprakash Associates Ltd for alleged abuse of dominance

The Competition Commission of India (CCI) by way of its order dated October 26, 2015 has exonerated M/s Jaiprakash Associates Ltd and M/s Jaypee Infratech Ltd. (OPs) by majority view for alleged abuse of dominance on an information filed by five individuals (Informants) who were the applicants/allottees of the residential unit in the project of the OP. Informants have alleged violation of section 4 of the Competition Commission Act, 2002 ("the Act").i.e. abuse of dominant position by imposing highly arbitrary, unfair and unreasonable conditions in the agreements for allotment of residential apartments which blatantly violated the principles of free and fair competition.

Facts of the Case:

The Informants are allottees of residential units in 'Jaypee Aman' (Noida), 'Jaypee Sun Court' and Jaypee Sea Court (Greater Noida). They alleged that M/s Jaiprakash Associates Ltd. ("JAL") along with its group company M/s Jaypee Infratech Ltd. ("JIL") abused its dominant position by imposing highly arbitrary, unfair and unreasonable conditions in the agreements for allotment of residential apartments which violated the principles of free and fair competition and thereby contravened sections 4(2)(a) and 4(2)(e) of the Act. The information was against Jaiprakash Associates Ltd (JAL), Jaypee Infratech Ltd (JIL), and Deutsche Postbank Home Finance Ltd. It was alleged that Application form did not mention name of the project · Further, columns relating to consideration (basic sale price, car parking, preferential location charges etc.) were left blank and the undertaking along with the application form was onerous and one sided. Moreover, introduction of clauses relating to maintenance deposit/ maintenance charges/ club membership fees were not told at the time of booking. Further, it was made obligatory for applicant/ allottee to sign a separate maintenance agreement for maintenance of common areas and facilities. Presence of clauses stating that applicant/ allottee would have no right, title or interest on the premises either during its construction or after its completion till the execution of Indenture of Conveyance. Unilateral changes in the original plan and instead of 24 floors, the plan was modified to build 28 floors; Delay in delivery of possession and since the agreement was highly one sided and arbitrary, no compensation was provided for this long delay in delivery; Terms and conditions provided an absolute right to JAL to reject/ not to allot the apartment to the applicant without assigning any reason while the applicant had to give an undertaking that the application for allotment was irrevocable, unless JAL desired so.

Investigation by Director General

The DG delineated the relevant product market as 'the provision of services for development and sale of residential apartments', after considering several factors such as : same market with similar services; company's brand name; number of projects, value; design; location etc. DG considered that the relevant geographic market would be that of Noida and Greater Noida. The DG examined number of dwelling units by builders in the relevant geographic market till 31.03.2012. It was noted that the top 3 groups were Amrapali, Jaypee and Supertech which had 36,211, 33,253 and 21,445 dwelling units respectively. Next to them was 3C Company which had 11,037 dwelling units to offer for sale. Other builders/ developers did not have matching figures to compare with the top 4 as the number of dwelling units of the next 5 ranged between 9043 to 21 only. The top market share on the basis of dwelling units was that of Amrapali Group with 28.30 per cent share and Jaypee Group came second with 25.99 per cent. Supertech Limited came at third position with 16.76 per cent and was still close with Jaypee Group whereas 3C Company and Unitech were there with 8.63 per cent and 7.06 per cent respectively. The DG also concluded that the though several allegations were found to be unfair, the same did not emanate out of dominant position of Jaypee Group. DG also pointed out that OP is not at any commercial advantage over its competitors and after considering other aspects of entry barrier, consumer dependence and countervailing buying power, the DG opined that OP did not have the position of strength that could enable it to operate independently of competitive forces prevailing in the relevant market or to affect its competitors or consumers in its favour.

CCI, after considering the objections to the above report, ordered a supplementary investigation in the same case directing consideration on the aspect whether an integrated township constituted a separate relevant market by itself or not. DG accordingly conducted further investigation and concluded in the supplementary report that the relevant market was "sale of residential apartments in integrated townships in Noida and Greater Noida". Jaypee Group was found to be dominant and also having abused its dominant in the said relevant market.

Majority View

CCI observed that JAL/ JIL does not have the ability to influence the conditions of competition in the relevant market of for provisions of services for development and sale of residential apartments in Noida and Greater Noida. Further, the market share of the Amrapali Group was found to be higher than that of the Jaypee Group, on the basis of the actual sales made by them in the period 2009 to 2011. However, while rejecting the narrowed definition of the market, the CCI observed that the concept of "integrated township" is a new marketing concept and is still an evolving one and has not reached to a level that each such township can be considered as a relevant market in itself, particularly, when all such so called township have similar features and are, therefore, substitutable from a customer's point of view. Therefore, JAL/ JIL is not in a dominant position in the aforesaid relevant market, the question of examining the alleged abusive conduct does not arise.

Minority view

The Minority view on the other hand held that due to specific policies designed by the Government for Integrated townships and unique features of such townships, which make the apartments in such townships as "distinct and unique products", which are not substitutable with the apartments in standalone apartments, the relevant market should be construed as "sale of residential apartments in integrated townships in NOIDA ", in which the Jaypee Group has the largest market share with largest number of apartments ,besides it largest land reserve. Therefore, Jaypee Group is dominant in such market. Further, after examining the one sided clauses in the Flat Buyers Agreements, the minority view held the terms and conditions in the apartments buyers agreement were unfair and violative of section 4(2)(a)(i) of the Act. Consequently, the minority order imposed a penalty of INR 666 Crore of Jaypee Group.

(Source: CCI Order dated October 26, 2015. For full text see CCI website)

CCI closes case of abuse of dominance and unfair trade practices against Maharashtra's Department of Sales Tax

The CCI in its order dated September 29, 2015 dismissed allegations against Departments of Sales Tax/Professional Tax (Department).Taj Pharmaceuticals(Informant) complained that the Department had abused its dominant position with regard to issuance of tax notices. The Department had issued tax notices to Informant's 16 companies which are not operational and an FIR was registered. CCI made its observation as "By performing the said activity, OP 1 (the Department) is merely carrying out the sovereign function of the government and as such is not engaged in any economic activity to be covered within the definition of an enterprise, given the facts of the present case," and said vide its order that the nature of the activities undertaken by the Department do not fall within the ambit of the Competition Act, 2002."The Maharashtra State Tax on Professions, Trades, Callings and Employments Act, 1975 also provides appellate remedy if a person is aggrieved," the order said. The CCI concludes as no prima facie of competition norms violation and decided to dismiss the complaint.

(Source: CCI: Order dated September29, 2015. For full text see CCI website)

CCI dismisses a case against seven power distribution companies across four states

CCI vide its order dated September 29, 2015 closed the case allegingabuse of dominant position by seven power distribution companies, including three from the National Capital and remaining others from Punjab, Haryana and Himachal Pradesh, electricity boards (OPs).

The Information was filed by the Open Access Users Association

(Informant) where it was also alleged that the OPs have unduly influenced and made unreasonable suggestions to their respective State Electricity Regulatory Commissions SERCs)in order to increase various charges for Open Access. Noting that there is no competition issue involved in the factual matrix disclosed in the information, CCI noted that the present case is essentially related to the regulatory functions discharged by the SERCs in respect of fixation of tariffs.

".Under the Electricity Act, open access refers to non- discriminatory provision for the use of transmission lines or distribution system or associated facilities with such lines or system by any licensee or consumer or a person engaged in power generation. In its order CCI noted that the charges for Open Access are to be decided by the respective as per the Electricity Act and any issues would be dealt by the state electricity regulator and the appellate authority. No case is made out against the seven entities for contravention of the Act, and hence the case was dismissed at the prima-facie stage.

(Source: CCI: Order dated September 29, 2015. For full text see CCI website)

CCI closes case against a daily newspaper of Times Group in Mumbai

The CCI by its order dated September 29, 2015 dismissed case against a daily newspaper of Times Group Bombay Timesonline portal www.halfticket.tv, managed by Cloudwalker Streaming Technologies Private Limited ("Informant") and engaged in showcasing /exhibiting feature films including short films etc. The informant wished to publish an advertisement in the daily newspaper of Times Group, owned and controlled by Bennett, Coleman and Co. Ltd (OP). The OP was alleged to charge the said advertisement under the "Display category" instead of charging rate as indicated in the "entertainment card", which was three times the rate of the latter. The informant stated that the OP virtually monopolized the newspaper advertisement segment in the market and hence its conduct amounted to alleged for being dominant and shows abuse of dominance u/s 4 of the Act.

The commission defined the relevant market in the above matter as "market for services of procurement of advertisement space in English print media in Mumbai". CCI was of the view that OP may be enjoying a wide readership in the relevant market but there are several other reputed newspapers, which are also enjoying a large readership in the relevant market and posing competitive contraintson OP. The presence of large number of other English newspapers in Mumbai provides more choice to the Informant as well as inhibits OP from exercising any kind of monopolistic power independent of market forces, thus OP is not dominant in the relevant market.

(Source: CCI: Order dated September 29, 2015. For full text see CCI website)

INTERNATIONAL

European Court of Justice (ECJ) issues an important judgment in Post Danmark II case

On October 6, 2015, the ECJ issued an important judgment clarifying the application of Article 102 to retroactive loyalty rebates (Post Danmark AS, Case C 23/14). The case, which had been referred to the ECJ by the Danish Commercial Court, The Danish Competition Authority decided in 2009 that Post Danmark had abused its dominant position on the market for mass mailings by applying loyalty-creating and market-distorting rebates for direct mail without demonstrating efficiency gains to the benefit of consumers.

Post Danmark challenged that finding before the national courts, and the Danish Supreme Court made a first reference to the ECJ in Case C-209/10. The Authority had also made submissions in that case concerning a different type of abuse, i.e. low pricing.

The ECJ in its findings stated that in applying Article 102 TFEU, there is no appreciability (de minimis) threshold for the purposes of determining whether there is an abuse of a dominant position. That anti-competitive practice is, by its very nature, liable to give rise to not insignificant restrictions of competition, or even of eliminating competition on the market on which the undertaking concerned operates That said, the ECJ concluded that in order to fall within the scope of Article 102 TFEU, the anti-competitive effect of a rebate scheme operated by a dominant undertaking must be probable.

(Source:http://eulitigationblog.com/2015/10/08/case-c-2314-post-danmark-ii-rebates/#more-791)

III. COMBINATION

CCI clears Baxter-Baxalta merger deal

CCI vide its order dated September 8, 2015 has approved the proposed transfer of Baxter India's bioscience business and related assets to its wholly-owned subsidiary Baxalta India, after finding that the transaction would not have an appreciable adverse effecton competition in the country. CCI observed that the combination, including the eventual India separation, relates to a structural separation of the target business from Baxter into the newly-created company Baxalta.

Baxter provides a broad portfolio of bioscience products (constituting the Target Business), intravenous solutions and nutritional therapies, drug delivery systems, etc. Baxalta, prior to the combination, was a wholly owned subsidiary of Baxter and did not carry out any business activities.

The CCI noted that since Baxalta was a wholly-owned arm of the Baxter and did not carry out any business activity, there was no horizontal overlap or vertical relationship between the business activities of Baxter and Baxalta.The proposed combination relates to a mere structural separation of the target business from Baxter into a newly incorporated subsidiary, Baxalta.

(Source:CCI: Order dated September 08, 2015. For full text see CCI website)

CCI approves German firm Heidelberg Cement's proposed acquisition of shares in ItalcementiSpA (ISPA)

CCI by its order dated September 17, 2015, approved the proposed acquisition of 45% shareholding in Italcementi S.p.A (ISPA) by Heidelberg Cement AG from Italmobiliare S.p.A. (ISPA). Both the companies are into the business of cement and building material.

Further, in pursuance to the proposed combination, Heidelberg would file a public offer for buying outstanding shares of ISPA from public in order to acquire approximately 98.89 percent shareholding in ISPA, while ISPA would continue to hold around 1.1 percent shares.

Heidelberg is a global producer of cement and other construction material (such as ready mix concrete), aggregates, asphalt, etc. Heidelberg is present in India through its two subsidiaries, namely, Heidelberg Cement India Limited ("HCIL") and Cochin Cements Limited ("CCL"). It has a cement production capacity of around 5.5 MTPA (on an all-India basis) through its cement plants located in the states of Madhya Pradesh, Uttar Pradesh, Karnataka and Kerala.

In India, Heidelberg, through its subsidiaries, manufactures and sells clinker and different varieties of grey cement such as pozzolona portland cement ("PPC") and portland slag cement ("PSC"), apart from trading of coal, petcoke and gypsum.

ISPA is also global producer of cement and other construction material (such as ready mix concrete), aggregates, asphalt, etc. It is present in India through its subsidiary, namely, Zuari Cement Limited ("Zuari").

ISPA has 3 operational plants located in the states of Telangana, Andhra Pradesh and Tamil Nadu. Further, there are two plants at different stages of development in Karnataka and Maharashtra, giving it an operational production capacity of around 6 MTPA and capacity under development of around 4.1 MTPA in India.

In India, ISPA, through its subsidiary manufactures and sells clinker and different varieties of grey cement such as ordinary portland cement ("OPC"), PPC and PSC, apart from trading cement products and building material like AAC blocks, admixtures etc.

The Commission, in its earlier decisions, has noted that different varieties of grey cement are considered to be largely interchangeable, whereas white cement constitutes a different market. Therefore, the relevant product market in the proposed combination is defined as the market for grey cement. The relevant geographic market was left open as the proposed combination is unlikely to cause AAEC in any of the markets.

The CCI approved the combination is found that the proposed combination is not likely to have an appreciable adverse effect on competition in India in any of the relevant market(s).

(Source: CCI: Order dated September 17, 2015. For full text see CCI website)

INTERNATIONAL

European Commission: Commission opens in-depth investigation into Hutchison's proposed acquisition of Telefónica UK

The European Commission has opened an in-depth investigation under the EU Merger Regulation to assess whether the proposed acquisition of Telefónica UK by Hutchison would harm competition. The Commission has concerns that the transaction could lead to higher prices, less choice and reduced innovation for customers of mobile telecommunications services in the UK. Since Mobile telecom services are increasingly important to consumers, it is important to ensure that consumers in the UK do not pay higher prices or face less choice as a result of this proposed takeover. The transaction would combine Telefónica UK with Three UK, a subsidiary of Hutchison, which are respectively the second and the fourth largest mobile network operator (MNO) in the UK. This would create the largest MNO in the UK.

Commission's initial market investigation raised the following main concerns:

(i) Telefónica UK and Three UK currently compete against each other in the retail mobile telecommunications market in the UK. The Commission has concerns that the transaction would remove an important competitive force and that the merged entity would have limited incentives to exercise significant competitive pressure on the remaining competitors. This would lead to higher prices and less investment in mobile telecommunications networks.

(ii) the transaction would reduce the number of MNOs that are effectively willing to host mobile virtual network operators (MVNOs). Prospective and existing MVNOs would have less choice of host networks and hence weaker negotiating power to obtain favourable wholesale access terms.

(iii) the reduction in the number of competitors following the merger risks leading to a weakening of competitive pressure and increased likelihood that MNOs will coordinate their competitive behaviour and increase prices on a sustainable basis on the retail and wholesale markets.

The Commission will now investigate the transaction in-depth in order to determine whether its competition concerns are confirmed. The Commission will in particular examine questions such as the extent to which the parties are close competitors, the market incentives that would be faced by the merged entity and the potential reaction of its competitors. The transaction was notified to the Commission on 11 September 2015. The Commission now has 90 working days, until 16 March 2016, to take a decision. The opening of an in-depth investigation does not prejudge the outcome of the investigation.

(Source: European Commission: Press Release dated October 30, 2015)

FRANCE: European Commission clears acquisition of car trader MSA by rival car manufacturer of the Volkswagen Group

The European Commission (EC) has approved under the European Union (EU) Merger Regulation the acquisition of MSA by PGA. MSA and PGA are retail distributors of passenger cars and light commercial vehicles and related services in France. PGA is controlled by the Volkswagen Group that is active in car manufacturing and other related services. The Commission concluded that the proposed acquisition would raise no competition concerns because the companies' market shares are low. Moreover, they face competition from a large number of retail companies.

(Source: European Commission: Press Release dated October 19, 2015)

European Commission clears Intel's acquisition of Altera

The European Commission has cleared the proposed acquisition of electronic component supplier Altera by Intel. The Commission concluded that the merged entity would continue to face effective competition in Europe. The parties to combination supply different types of semiconductors. Semiconductors are electronic components that can be found in virtually every electronic device today. The end-products that contain semiconductors range from base stations, mobile phones, computers, domestic appliances and cars, to medical equipment, identification systems, large-scale industry electronics and aerospace equipment. Altera designs and supplies semiconductors known as programmable logic devices ("PLDs"). This product category includes both field programmable gate arrays ("FPGAs") and complex programmable logic devices ("CPLDs"). Intel designs, manufactures and supplies semiconductors known as microprocessors or central processing units ("CPUs"). The FPGAs produced by Altera can be used to accelerate certain repetitive computing functions of the CPUs produced by Intel such as the running of search algorithms (so-called "workload acceleration").In addition, Intel offers so-called contract manufacturing services to other suppliers of semiconductors. These contracts are entered into between Intel and semiconductor suppliers that do not own manufacturing facilities.

(Source: European Commission: Press Release dated October 14, 2015)

IV. MISCELLANEOUS NEWS

INDIA

Realty developers again move to CCI against cement firms

The Confederation of Real Estate Developers Associations of India (CREDAI) has reportedly alleged the Cement Manufacturers Association (CMA) are acting in concert by unilaterally raising prices by 20-40% at the time when the demand for the cement is low. CREDAI has alleged that the cost of raw material used in manufacturing cement had come down from January to September, 2015 but the cement companies never passed on this benefit to the consumers. Instead, they seemed to be working together in controlling supply and prices. Despite low demand, prices of cement have increased by 20-40 per cent in major cities across India in the past couple of months.

(Source: http://www.business-standard.com/article/companies/realty-developers-again-move-cci-against-cement-firms-115100500996_1.html)

INTERNATIONAL

European Commission: Commission signs best practices cooperation framework with China

The European Commission's competition department and the Ministry of Commerce (Mofcom) of the People's Republic of China have signed best practices for cooperation on reviewing mergers which will create a dedicated framework to strengthen cooperation and coordination between the Commission and China's merger review authority, Mofcom. The guidance will facilitate communication throughout the entire merger review procedure on issues of procedure and substance, including the definition of relevant markets, theories of harm, competitive impact assessments and remedies. The signing of the guidance document reflects the ambition of enhanced cooperation on competition matters between the EU and China.

(Source: European Commission: Press Release dated October 15, 2015).

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