Competition News Bulletin

VAISH ASSOCIATES ADVOCATES
Delhi • Mumbai • Gurgaon • Bengaluru
Celebrating over 40 years of professional excellence

August, 2015

Inside...

I. CARTELS AND ANTI-COMPETITIVE AGREEMENTS

INDIA

Competition Commission of India (CCI) imposes a penalty of INR 671 Crore on four PSU insurance companies

CCI by its order dated July 10, 2015 penalised four-public sector insurance companies- National Insurance Company Ltd., New India Assurance Co. Ltd., Oriental Insurance Co. Ltd., United India Insurance Co. Ltd. for cartelisation in bidding for tender dated November 18, 2009 for selecting insurance service provider for implementation of Rashtriya Swasthya Bima Yojna (RSBY) for the year 2010-11 in Kerala. Anonymous information filed in the CCI submitted evidence showing that the four PSUs agreed to sharing business in meeting attended by the officials of the PSUs. The Director General (DG) also found that United India won the tender-as envisaged in the agreement- and later on shared the business with the other three PSUs. Further the PSUs invoked the exit clause of the tender year after year. Such invocation would lead to re-tendering and the PSUs would bid again with inflated premiums in the subsequent tenders. OPs raised a preliminary plea that Ops are exempt from the section 3 of the Act as they form a 'single economic entity' with 100% shareholding vested in the Govt. of India, which controlled the management and affairs of the companies. However, the Commission noted that regulatory reforms have been introduced which envisage that the four insurance PSUs act independently of each other. The parties had also admitted before the DG that all decision relating to submission of bids were taken without any prior approval from the Ministry of Finance. Hence the Govt. did not exercise any control over the four PSUs, and hence they cannot be said to constitute a 'single economic entity'.

The evidence clearly established that the representatives of the companies met one day prior to submission of bids and entered into an anti-competitive agreement to manipulate the tendering process for implementation of the RSBY schemes, where United India received 70% of the premium are shared the remaining 10% with the remaining three PSUs. The conduct amounts to bid-rigging in violation of section 3(3)(d) of the Act. A penalty of 2% of the average turnover of the last three financial years has been imposed on the four PSUs, amounting to a total of INR 671 crore.

(Source: Order dated July 10, 2015. For full text see CCI website-www.cci gov.in)

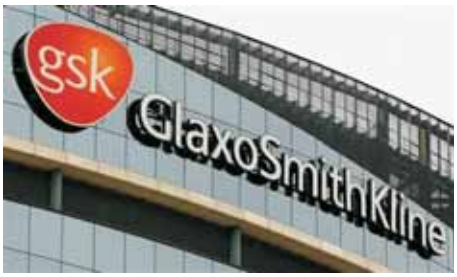
CCI finds anti-competitive agreements between Karnataka film industry associations a violation of section 3(3) of the Act-

CCI by its order dated July 27, 2015 has found that the agreements between film industry associations in the Karnataka a violation of section 3(3) of the Act. The CCI found that the trade associations- engaged in

the business of production exhibition and distribution of films and TV serials- have no allowed release or broadcast of content dubbed in the Kannada language. The OPs took counter-action against those not following its directions. This order is the latest in the series of order by the CCI against film industry associations. The CCI considered the collective conduct a violation of section 3(3) of the Act. A penalty of approx. INR 20 Lakh has been imposed on three trade association as regards the violative conduct.

(Source: CCI: Order dated July 27, 2015.For full text see CCI website)

CCI penalizes GlaxoSmithKline Pharmaceutical Limited and Sanofi for participating in cartelization



CCI by its order dated June 04, 2015 fined GlaxoSmithKline Pharmaceutical Limited (GSK) for INR 60 Crore (INR 604,890,469.998) and Sanofi for INR3 Crore (INR 30,434,200.89), @ 3% of their turnover for previous three financial years. The case was filed by Bio-Med Private Limited against Deputy Assistant Director General (Stores), Medical Store Depot, Ministry of Health and Family Welfare, Government of India (DADG), GSK and Sanofi alleging, inter alia, contravention of the provisions of sections 3 and 4, i.e. anti-competitive agreements and abuse of dominant position, respectively. DG observed that DADG was not an enterprise within the meaning of the Act and hence, no further enquiries were held against them. However, DG proceeded against GSK and Sanofi. The DG concluded that the conduct of GSK and Sanofi demonstrated that they were acting in concert and collusively leading to an anti-competitive agreement. It was noted that upon entrance of Bio-Med, instead of competing, GSK and Sanofi increased the tendered quantities and prices. CCI, in confirmation with DG, penalized the companies and decided to pass separate order for determining individual liability of persons responsible under section 48 of the Act. While penalizing GSK and Sanofi, CCI passed cease and desist order against the companies to not engage in such activities.

(Source: CCI Order dated June 04, 2015. For full text see CCI website)

CCI Penalizes 13 manufacturers of CN containers for cartelization

CCI by its order dated June 10, 2015 imposed penalty @ 3% of their annual turnover for preceding three yearsagainst thirteen manufacturers/suppliers of CN Containers (containers with disc required for manufacture of 81 mm bombs) for indulging in practice of cartelization. The Opposite Parties (OPs) involved were namely, Sheth & Company, Veekay Enterprises, Sai Trading, Sai Industries, Shree Polymers, Sai Enterprises, Mac Polymer, Miltech Industrial Pvt. Limited, Nityanand Udyog, Interplas (India) Private Limited, M/S Baijnath Plastic Products Private Limited, Narendra Explosive Limited, and Narendra & Company. CCI, while forming prima facie opinion observed that even though OPs were located at

different places, some of them quoted identical prices in response to few tenders while others have refrained from participating in the tender process and referred the matter to the DG for investigation. DG concluded that the market conditions prevalent in this sector and supply of the container are controlled by few entities operating under different names. Moreover, on account of relatively low demand for the container and the high installed capacities of the existing players, the market has not seen any significant new entrant(s) in the last few years. Further, with small number of suppliers, little or no entry, stable demand conditions, identical products or services and few or no substitutes, etc., indicate that the market is conducive to cartelization. DG concluded that OPs acted in contravention of Section 3(3)(a) and Section 3(3)(d). CCI, accepting the view of DG, observed that the manufacturers indulged in anti-competitive practices i.e. collusion of bid prices; existence of an agreement between the parties since the price bids submitted were either identical or similar; existence of cross ownership of the few market players-out of the thirteen manufacturers, the modus operandi of at least ten of these firms was governed by mutual understanding; quoting identical/similar price bids along with enterprises with same owners, stringently standardized product, and predictable demand resulted in appreciable adverse effect on competition, and agreement between the OPs resulted in creation of barriers to new entrants, and held them violative of Section 3 and Section 4 of the Act. On the basis of abovementioned findings, CCI was of the view that the companies were engaged in the practices of determination of purchase price of CN Container and collusive bidding in contravention of the provisions of the Act. CCI while imposing the abovementioned fine, directed the companies to cease and desist from the practices that were found to be anti-competitive i.e., price fixing and collusive bidding.

(Source: CCI Order dated June 10, 2015. For full text see CCI website)

CCI penalizes Kerala Film Exhibitors Federation and Film Distributors Association cartelization

CCI by its order dated June 23, 2015 penalized Kerala Film Exhibitors Federation (KFEF) @ 7% of the average income for two financial years (INR 56,134); Film Distributors Association (FDA) @ 3% of the average income for three financial years (INR for INR 45,189); along with penalties on office bearers of the said associations. The present case was filed by Kerala Cine Exhibitors Association (KCEA) against Kerala Film Exhibition Federation (KFEF), Film Distributors Association (FDA), Kerala Film Producers Association (KFPA), Kerala State Chalachitra Academy (KSCA) and State of Kerala alleging contravention of Section 3 and Section 4 of the Act. It was contented that KFEF, FDA and KFPA have been involved in anti-competitive practices and that, the members of KFEF and FDA have formed a cartel and are denying the members of KCEA release of new films in their theatres. A prima facie case was formed and Director General (DG) investigated the case. DG noted that there existed an understanding between KFEF and FDA, and they acted accordingly. It was further noted that KFPA had no active role in cartel between KFEF and FDA. DG found that State of Kerala had no role in cartelization between KFEF, FDA

and, KFPA. It concluded that KSCA and State of Kerala are not guilty of any anti-competitive conduct. CCI, conforming the view of DG, held that KFEF, FDA and, KFPA have transgressed their legal contours and indulged in collective decision making to limit and control the exhibition of films in the theatres other than the ones owned by the members of KFEF. As identified by DG, CCI held office bearers of associations liable under Section 48 of the Act for making anti-competitive decisions. KFPA was adjudged not to be in contravention of the provisions of the Act. While penalizing, CCI directed KFEF and FDA to cease and desist from indulging in such activities.

(Source: CCI Order dated June 23, 2015. For full text see CCI website)

CCI closes case against fabric suppliers to Indian Railways on allegation of bid-rigging

CCI by its order dated July 1, 2015 dismissed allegations of bid-rigging against manufacturers of leather fabrics used in non-AC coaches on the Indian Railways. It was alleged that Responsive Industries Ltd., a major manufacturer of upholstery, had entered into a cartel with 4 other manufacturers, and bid for various tenders with an understanding that only Responsive shall secure the tender. It was alleged that the rates quoted were not competitive in nature and were exorbitant.

However, the CCI noted that the prices quoted by the bidders were actually lower than the indicated price of upholstery, thus dismissing the allegation of excessive prices being quoted by the bidders.

Responsive Industries, against whom the primary allegations were made, justified quoting higher prices on account devaluation of Rupee and hike in petroleum prices which led to increase in manufacturing cost of the upholstery. The CCI took into account that the opposite parties had established that they were independent entities and no collusion existed amongst them which would have resulted in violation of the Act. Even the I.P. addresses of computers from which bids were submitted were found to be distinct. CCI closed the case as it did not find any violation of the Act established.

(Source: CCI: Order dated July 1, 2015.For full text see CCI website)

CCI exonerates IATA for alleged anti-competitive agreement(s) and price-fixing

CCI by its order dated June 04, 2015 had exonerated IATA for alleged anti-competitive practices and abuse of dominance. The instant case was filed by Air Cargo Agents Association of India (ACAAI) against International Air Transport Association (IATA) and International Air Transport Association (India) Pvt. Ltd (IATAI) alleging contravention of sections 3 and 4 of the Act. It was alleged that IATA unilaterally prescribes the regulatory system assuming to itself the regulatory power for registering, accrediting and regulating the engagement of cargo agents by the

airlines in India. IATA runs the licensing system for the IATA registered cargo agents, among others, prescribing various registration and accreditation requirements, and also enforcing many financial terms and conditions on cargo agents in India; IATA was about to unilaterally introduce a Cargo Accounts Settlement System (CASS) in India. Under CASS, the cargo agents are required to make full payment on stipulated due dates for freight and other dues to all airlines through IATA-CASS office which would disburse the relevant amount to each individual airline. It was further alleged that CASS rules were anti-competitive andfixation of rate of commission @ 5% to be anti-competitive and would affect the cargo agents. CCI, forming a prima facie view, directed the Director General (DG) to investigate the matter.

After considering the contentions of the parties and report of Director General (DG), CCI observed that

- Via-a-vis the current physical system of clearance in the air cargo industry, CASS is scientific and efficient. It was observed that CASS is a global phenomenon, having much advantage to both the carriers and agents and, it will enhance administrative efficiencies, reduce operational costs, and provide economies of scale, standardization, and automation in the collection and distribution of revenue, lead to creation of neutral settlement office, elimination of loss of invoice, enhanced financial control, reduced personnel and administrative costs.
- The Commission noted that IATA plays the role of self-regulator and as such the accreditation provided by IATA is not mandatory and hence, cannot per se be taken as anti-competitive. Further, it was observed that such accreditation would help the stakeholders in providing assurance about the quality of services provided by the cargo agents. Accordingly, it cannot be termed as anti-competitive within the meaning of section 3(3) read with section 3(1) of the Act.
- The practice of fixing 5% commission to the cargo agents has been practiced since 2006, on account of the intervention of Ministry of Civil Aviation, Government of India and hence, cannot be said to be arbitrary.

Considering the above, the Commission held that the introduction of CASS is not anti-competitive in terms of section 3(3)(b) of the Act, as alleged by the ACAAI and the fixing of 5% commission by the Ministry of Civil Aviation does not amount to violation of section 3(3)(a) of the Act.. (Source: CCI Order dated June 04, 2015. For full text see CCI website)

CCI exonerates Maruti Suzuki India Ltd. against allegations of anti-competitive agreement and abuse of dominant Position-

CCI by its order dated May 28, 2015 exonerated Maruti Suzuki India Ltd (Maruti) for alleged contravention of sections 3 and 4 of the Act. The instant case was filed by Rooster Info Private Limited against Maruti alleging contravention of the provisions of sections 3 and 4 of the Act. It was alleged that Maruti coerced the transporters to install a GPS unit from either Trimble or Efcon leading to violation of Section 3(3)(b). It refused to provide

the load to vehicles which did not have GPS from the above said two companies. It was further alleged that Maruti is also fixing the price of GPS unilaterally in contravention of section 3(3)(a) of the Act. Also, the conduct of Maruti to enter into agreements with the above said two companies is alleged to create appreciable adverse effect on competition (AAEC) and thus, violates the provisions of section 3(4)(a) of the Act. It was further alleged that by imposing an unfair condition on the transporters for purchase of GPS, Maruti violated the provisions of section 4(2)(a)(i) of the Act. No conclusive information was presented to show existence of an agreement/arrangement. Considering the facts and available information, CCI prima facie observed that even if agreement existed, the effect would be negligible on the competition. The relevant market was determined as "market for procurement of services of GPS device installed vehicles in India". On analyzing the market share, it was held by CCI that Maruti is not in dominant position and thus, cannot abuse its position. While dismissing the case, CCI held that there was no prima facie case against Maruti under provisions of sections 3 and 4 of the Act.

(Source: CCI Order dated May 28, 2015. For full text see CCI website)

CCI dismisses allegations of cartelisation against Bombay Dyeing & Manufacturing Company Limited, Confederation of Real Estate Developers Association of India& Maharashtra Chamber of Housing Industries

CCI by its order dated May 19, 2015 exonerated Bombay Dyeing @ Manufacturing Company Limited (BD), Confederation of Real Estate Developers Association of India (CREDAI), Maharashtra Chamber of Housing Industries-CREDAI (MCREDAI) for alleged anti-competitive practices under section 3 of the Act. It was alleged that BD, CREDAI and MCREDAI have been indulging in the practice of incorporating standard clauses in their respective apartment buyers' agreement. CCI observed that section 3(3) of the Act would be attracted only if there is a practice carried on by an association of enterprises or association of persons, and that, such practice determines, directly or indirectly, purchase or sale prices of apartments. Nothing was presented to prove such an arrangement. Further, nothing was brought up indicating that these standard clauses in agreements determine the prices of apartments. Hence, CCI held that BD, CREDAI and MCREDAI were not in violation of section 3 of the Act.

(Source: CCI Order dated May 19, 2015. For full text see CCI website)

CCI exonerates Agni Devices Pvt Ltd for anti-competitive agreement and abuse of dominant position

CCI by its order dated May 7, 2015 dismissed allegations of violation of sections 3 and 4 of the Act against Agni Devices Pvt. Ltd (Agni). The case was filed by Shri Ashok Kumar Sharma against Agni alleging contravention of the provisions of sections 3 and 4 of the Act. It was alleged that Agni along with its sister company engaged in practices which are violative of section 3 of the Act. It was alleged that the threatening language in the notice sent by Agni indicates abuse of dominance which is in contravention of the

provisions of Section 4 of the Act. It was observed by CCI that a case was also pending before registrar of trademarks. Based on the facts and circumstances of the instant case, CCI observed that the issue involved was purely a trademark dispute and did not raise any competition concern. CCI found that no prima facie case of contravention of the provisions of sections 3 and 4 of the Act was made out.

(Source: CCI Order dated May 7, 2015. For full text see CCI website)

INTERNATIONAL

European Union (EU): European Commission (EC) fines distributors for cartelization in retail food-packaging trays

The EC has fined eight manufacturers and two distributors of retail food packaging trays a total of €115,865,000 for having participated in at least one of five separate cartels. The eight manufacturers are Huhtamäki of Finland, Nespak and Vitembal of France, Silver Plastics of Germany, Coopbox, Magic Pack and Sirap-Gema of Italy and Linpac of the UK. The two distributors are Ovarpack of Portugal and Propack of the UK.The companies fixed prices and allocated customers of polystyrene foam or polypropylene rigid trays, in breach of EU competition law. From the early 2000s and for periods ranging from just over a year to almost eight years, the ten companies fixed prices, allocated customers and markets, engaged in bid-rigging and exchanged commercially-sensitive information. The EC's investigation revealed the existence of five separate cartels for retail food packaging in a large part of the European Economic Area (EEA).One of the members of the cartel, Linpac, received full immunity from fines as it was the first company to reveal the cartel to the EC, thereby avoiding a fine of € 145 065 000. Other companies received reductions on their fines for their cooperation in the investigation under the EC's leniency programme.

(Source: European Commission: Press release dated June 24, 2015)

Germany: Federal cartel office imposes fine of 75 million Euros on automotive part manufacturers

On account of price fixing agreements the Federal Cartel Office (FCO) has imposed fines totaling 75 million euros on five manufacturers of acoustically effective components and staff responsible which supply the automotive industry. The companies involved are Autoneum Germany GmbH, Roßdorf, Carcoustics International GmbH, Leverkusen, GreinerPerfoam GmbH, Enns (Austria), Ideal Automotive GmbH, Burgebrach, and the International Automotive Components Group GmbH, Düsseldorf.

The object of the agreements was so-called acoustically effective components. These include flooring, car mats, hat racks, trunk trims, textile wheel house shells, engine compartment insulations, front shock absorbers and trunk shock absorbers.

The agreements were concluded on the basis of numerous bilateral contacts and in three different multilateral discussion groups.

The level of fine was calculated according to the seriousness, duration of a competition law violation, market power and the behavior of the opposite market side. In accordance with the authority's leniency programme, no fine was imposed on Johann Borgers GmbH, Bocholt, which was also involved in the agreements but was the first company to cooperate with the Federal Cartel Office.

(Source: Federal Cartel Office, Germany: Press Release dated June 24, 2015)

EU: Sky UK and 6 Hollywood film studios accused of entering into anti-competitive agreements

A formal Statement of Objections has been filed by the EC after conducting investigations against Sky UK and 6 Hollywood film studios including Twentieth Century Fox, Warner Bros., Sony Pictures, NBC Universal, Paramount Pictures, and Disney for entering into anticompetitive agreements. The main concern leading to the is whether American film studios are entering into have into agreement(s) with Sky UK broadcasters to prevent consumers from accessing content (streaming/online)from outside the home countries (Ireland and UK). Contracts currently limit viewers' ability to watch films and other content across different territories. EU competition law prevents companies from limiting their services across national borders within the union. Concurrently, some agreements also contain clauses that require the studios to ensure that broadcaster outside the UK are precluded from making available their services in the UK and Ireland. The EC is of the opinion that these clauses grant 'absolute territorial exclusivity' to Sky UK and/or other broadcasters. They eliminate cross-border competition between pay-TV broadcasters and partition the internal market along national borders, thus seriously violating the EU competition law.

(Source: European Commission: Press Release dated July 23, 2015)

II. ABUSE OF DOMINANCE/MARKET POWER

INDIA

CCI closes case against Indian Railway Catering and Tourism Corporation (IRCTC) and Ministry of Railways for alleged abuse of dominance

The CCI by its order dated August 10, 2015 has closed a case alleging abuse of dominance by IRCTC along with Ministry of Railways. The Informants had alleged that the IRCTC is involved in unfair practices such as unfair/ discriminatory conditions in Passenger Reservation System (PRS), compulsory provision of food in Rajdhani, Shatabdi, and Duronto trains, market barrier for entry of IRCTC agents, monopoly of food courts at large railway stations, restrictions on technical and

scientific development in Indian Railways and restriction on private players providing meals through e-catering in trains with no pantry facility, etc. The investigation did not return any finding of violation of the Act. A brief summary of the major findings of the CCI with regards to the allegations is provided below:

1. The CCI considered that levy of service charges on e-tickets as well as through agents does not amount to an abuse of dominant position by the IRCTC as sale of tickets through internet is a value-added service provided by the Indian Railways and the service charges are levied in order to meet additional costs incurred due to sale of tickets online. Further, the customers had the alternative of avoiding the service charges by buying tickets through the PRS counters;

2. The CCI noted that additional imposition of service charges on passenger for purchase of tickets through IRCTC agents is not abusive as the charges are nominal and the service is added optional facility made available to the passengers and is meant to cover additional expenditure incurred by the IRCTC agents like Rent, electricity charges, etc.

3. Compulsory provision of food on Rajdhani/ Shatabdi/ Duronto trains was alleged as abusive as it does not give the customers as choice if they want to avail the services of food actually or not. The CCI disagreed with the same. The service is provided only on those premium trains which are less than 5% of the total number of trains operated by the Railways. Procuring food from outside the trains (railway platforms) will not be possible due to limited and short stoppage and allowing outside food will lead to security, safety and hygiene problems. Allowing food from outside may lead to security, safety, and hygiene problem in these premium trains. Lastly, the prices are not excessive in comparison to prevalent market rates.

4. Restrictions on technical and scientific development in Indian Railways do not amount to abuse of dominant position, although there is scope for major improvement in the services being provided;

5. As regards the premium charged for booking Tatkal tickets, the CCI was of the opinion that the Tatkal Scheme has been put in place to facilitate last-minute travel emergency plans. Further, the Tatkal and Premium Tatkal Scheme also help in generating additional revenue which help in covering the loss of revenue due to subsidization of passenger fares. As such it cannot be considered an abuse of dominant position.

6. Imposition of cancellation/clerkage charges for cancellation of booked tickets is done as per the rules framed as per the Railways Act, 1989 and amounts to a statutory function. The same cannot be challenged in the CCI.

Consequently, the CCI concluded that the IRCTC has not contravened section 4 of the Act.

Finally, the CCI recommended that the Ministry of Railways should consider discontinuing levying of service charges and other unnecessary restrictions on booking of e-tickets which may not affect its revenues in any significant manner and ensures that fees and other charges are efficiently and effectively levied on the passengers. It noted that though the service charges imposed are not high, total exclusion of the same may advance the causes noted above and may particularly be beneficial to the larger section of society.

(Source: CCI: Order dated August 10, 2015. For full text see CCI website)

CCI imposes a suspended penalty of INR 420 Crore on Hyundai Motor India Ltd. (HMIL)

CCI by its order dated July 27, 2015 has imposed a suspended penalty on HMIL. In continuation of the earlier order of CCI against car manufacturers, wherein the 14 car manufacturers were penalised for abusing their dominant position by restricting sale and supply of spare parts and maintenance services in their respective aftermarkets, the CCI vide its order dated July 27, 2015, penalised HMIL for similar conduct of restricting supply of services in the aftermarket of its cars. The CCI had not proceeded against HMIL through its earlier order, as HMIL had obtained a stay against it from the Hon'ble High Court of Madras.

The conduct relates to the aftermarkets of spare parts (including diagnostic tools, technical manuals, catalogues, etc.) and provision of maintenance services in the aftermarkets of the respective cars of each manufacturer. Each car manufacturer, including HMIL, has been found dominant in its respective aftermarket. In abuse of its dominant position, HMIL restricted sale of spare parts to independent services providers (from suppliers or through over-the-counter sales from dealers), thus restricting their ability to compete with the authorised dealers of car manufacturers in the aftermarket of HMIL cars. The warranty was considered void if the car was repaired by an independent repairer. Further, HMIL also unfairly escalated the price of spare parts for its cars.. The exclusive distribution agreements, as well as refusal to deal clauses, between car manufacturers and their original equipment suppliers as well as car manufacturers and authorised dealers were held to be violative of section 3(4) of the Act. Owing to the above findings against HMIL, the CCI imposed a penalty at the rate of 2% of the average turnover of the preceding three years, amounting to INR 420 crore. It should be noted that the penalty is suspended as the Madras High Court has directed the CCI not to pass final orders in the present case.

It should be noted that similar allegations were made against Mahindra Reva Electric and Premier Ltd. As regards Premier, the CCI considered that most of its cars were under warranty and hence the alleged abusive conduct could not be tested. Further, as regards Reva, the CCI found that the spare parts of said manufactures were available over-the-counter to some extent. The CCI considered the above mitigating factors to work in favour of Reva and Premier and decided not to impose penalty on them in the particular case.

(Source: CCI: Order dated July 27, 2015. For full text see CCI website)

CCI holds DLF's Buyer's Agreement abusive and unfair

CCI by its order dated May 12, 2015 held that DLF Group abused its dominant position in the Gurgaon apartment buyers market by imposing abuse terms and unfair terms and conditions. CCI directed DLF and its group companies to cease and desist from indulging in such abusive and unfair conduct.

The relevant market in the present case was considered as the market for "the provision of services for development/sale of residential apartments in Gurgaon"

Largely relying of its earlier decisions against DLF, the CCI held that the DLF group enjoys a dominant position in the market in the present case.

The CCI then held that DLF group abused its dominant position imposing unfair terms such as increase in the number of floors beyond the number intimated to buyer, unfair cancellation policy and forfeiture of booking amount, unfair additional demands on account of increase in super area, unfair financial pressure on buyers, unfair buyers' agreement.

CCI directed DLF and its group companies to cease and desist from indulging in the conduct which is found to be unfair and abusive. CCI did not find it necessary to impose fine on DLF owing to a previous penalty of INR 630 crores.

(Source: CCI Order dated May 12, 2015.For full text see CCI website)

CCI initiates investigation against Jaypee Greens

CCI by its order dated May 21, 2015 has initiated an investigation against M/s Jaypee greens for alleged abuse of dominance in the relevant market for "the services of development and sale of residential units in Noida and Greater Noida" on information filed by an individual. CCI, while directing the matter for investigation to the DG observed that the clauses of the provisional allotment letter issued by the Jaypee Greens with respect to the allotment of villa/ residential unit in the aforesaid relevant market are unfair, one sided and heavily loaded in favour of the developer, owing to its dominant position which is prima-facie of section 4(2)(a)(i) of the Act.

(Source: CCI: Order dated May 21, 2015. For full text see CCI website)

CCI commences another investigation against Ericsson in relation to Standard Essential Patents (SEPs)

CCI by its order dated May 12, 2015 has initiated an investigation against M/s Telefonaktiebolaget L M Ericsson (Publ) & M/s Ericsson India Private Limited for alleged contravention of section 4 of the Act. The instant case was filed by Best IT World Pvt. Ltd. (iBall). Ericsson has been prima-facie considered to be a dominant entity owing to its position as the holder of the SEP for GSM and WCDMA mobile telephony

standards. Practices adopted by Ericsson appear to be discriminatory as well as contrary to fair reasonable and non-discriminatory (FRAND) terms. Ericsson refused to share the details of SEPs with iBall which it considered violated, unless iBall signed an onerous non-disclosure agreement as drafted by Ericsson. Ericsson further acted contrary to the FRAND terms by imposing royalties linked with the cost of product being manufactured by the licensee. Charging of two different license fees per phone for use of the same technology, prima facie, appears to be discriminatory.

(Source: CCI: Order dated May 12, 2015. For full text see CCI website)

CCI exonerates state of Kerala, Kerala Public Works Department, Kerala State Construction Corporation and, Finance Department, Kerala for alleged abuse of dominance

CCI by its order dated May 12, 2015, rejecting the allegations of Builders' Association of India (Kerala Chapter) (BAI), held that the conduct of State of Kerala, Kerala Public Works Department (KPWD), Kerala State Construction Corporation (KSCC) and, Finance Department, Kerala (FDK) is not in contravention of sections 3 and section 4 of the Act i.e. anti-competitive agreement and abuse of dominance.

The CCI prima facie found merit in the case and referred it to the DG. DG found that despite exemptions and privileges it received from State of Kerala and KPWD, KSCC did not possess dominant share in the relevant market of "market for provision of services for civil construction work of Government of Kerala" so as to operate independently of the competitive forces prevailing in the relevant market or affect its competitors or consumers or the relevant market in its favor. Hence, no abuse of dominant position possible within the purview of section 4 of the Act.

Also, they are neither engaged in identical or similar trade or business to be covered under any of the provisions of section 3(3) of the Act nor the preference given to KSCC by State of Kerala and KPWD can be treated as vertical agreement in terms of section 3 (4) of the Act.

Referring and accepting the findings of the DG, CCI held that State of Kerala, KPWD and, FDK are statutory authorities and not enterprises and thus, do not come within the purview of the Act. Though KSCC was held to be an enterprise, its conduct was held to be non-abusive and not in contravention of the provisions of section 3 or 4 of the Act within the relevant market.

(Source: CCI Order dated May 12, 2015. For full text see CCI website)

CCI exonerates Dell India Pvt. Ltd against allegations of abuse of dominant position

CCI by its order dated 10 June 2015 dismissed from allegations of involvement in anti-competitive practices and abuse of dominant position against Dell India Pvt. Ltd (DIPL). The case was filed by M/s Surana and Surana (Surana) against DIPL alleging, inter alia, contravention of the provisions of Sections

3 and 4 of the Act by offering products at unfairly low prices. The relevant market was determined by CCI as "market of x86 server in India". CCI, after considering the market shares of various players, was of the view that the DIPL is not in a dominant position in the relevant market and thus, question of abusing its position, in terms of section 4 of the Act, does not arise.

The Informant also alleged that DIPL forbids a customer from obtaining quotes from more than one dealer, thus restricting the right of customers from getting competitive prices. CCI observed that even though DIPL and its distributors are vertically placed, its conduct does not lead to AAEC. Thus, CCI found noprima facie case of contravention of the provisions of sections 3 and 4 of the Act.

(Source: CCI: Order dated June 10, 2015. For full text see CCI website)

CCI dismisses cases against M/s NBC Universal Media Distribution Services Pvt. Ltd for anti-competitive agreements and abuse of dominant position

CCI by its order dated June 4, 2015 dismissed case against NBC Universal Media Distribution Services Pvt. Ltd (NBC), M/s UFO Movies India Ltd (UFO), M/s Real Image Media Technologies (RIMT) alleging anti-competitive agreement and abuse of dominance. The case was filed by M/s K Sera Sera Digital Cinema Pvt. Ltd. against NBC, UFO and RIMT alleging contravention of Sections 3 and 4 of the Act. It was alleged that UFO and RIMT control 50-60% of the market share and are abusing their dominant position in collusion with NBC. The OP-1 is restricting the release of movies in non-digital format and show the said movie at Informant's various associated theatres across the country depriving a large number of population from enjoying and viewing the movie at theatres.CCI observed that since no material and conclusive evidence was placed to infer an anti-competitive agreement and dominance in the market, there is no prima facie infringement of the provisions of Section 3 and Section 4 of the Act.

(Source: CCI: Order dated June 4, 2015. For full text see CCI website)

CCI dismissed allegations of anti-competitive agreement and abuse of dominant position against Bank of Baroda

CCI by its order dated June 2, 2015 exonerated Bank of Baroda (Vadodara, Gujarat) (BOBG) and Bank of Baroda (Nainital, Uttarakhand) (BOBN) for alleged anti-competitive practices and abuse of dominant position under sections 3 &4 of the Act, respectively.

The present case was filed by M/s Dhanvir Food Product against BOBG and BOBN alleging, inter alia contravention of the provisions of sections 3 and 4 of the Act. It was alleged that BOBN arbitrarily levied foreclosure penalties in violation of Reserve bank of India (RBI) Guidelines. Further, it was alleged that the conduct of BOBG and BOBN is detrimental to competition amongst the banks in the

market and against the interest of the borrower as it prevents the borrower from switching over to other bank and other financial institutions offering better options. Levy of an arbitrary prepayment penalty or foreclosure charges would deter or limit competition among banks/financial institutions drive existing competitors out of the market, forecloses competition by hindering entry into the market, create a barrier for the existing customers who wish to switch over and, enhance their fee based income. CCI determined relevant product market as the "market of commercial/corporate loan in India". CCI analyzed the advances of various banks in the market and concluded that BOBG does not have a dominant position in the market and thus, question of abuse of the position does not arise. Also, it was observed that RBI issued guidelines on "Levy of foreclosure charges/pre-payment penalty on Floating Rate Term Loans" for all scheduled commercial banks and financial institutions in 2014 advising them to abstain from charging foreclosure charges/ pre-payment penalties on all floating rate term loans sanctioned to any individual borrower. On the basis of abovementioned reasons and analysis, CCI concluded that BOBG and BOBN are not in violation of Section 3 and Section 4 and thus, relieved them of the allegations of anti-competitive agreement and abuse of dominance.

(Source: CCI Order dated June 2, 2015. For full text see CCI website)

CCI dismisses case against Doctor's Associates Inc, Subway International, Subway Systems India Private Limited alleging abuse of dominance and anti-competitive activities

CCI vide its order dated May 13, 2015 exonerated Doctor's Associates Inc (DA), Subway International (SI), Subway Systems India Private Limited (SSI) for alleged contravention of sections 3 and 4 of the Act. The instant case was filed by Shri Ramamurthy Rajagopal against DA, SI and SSI for alleged anti-competitive arrangements and abuse of dominance. It was alleged that SSI abused its dominant position by imposing unfair conditions insofar as Central VAT (CENVAT) Credit is concerned. Further, it was alleged that the Franchisee Agreement contained clauses in contravention of section 4 of the Act. The relevant market in the instant case is "market of services of franchisee for a fast food restaurant chain/ quick service restaurant chain". Allegations made under Section 3, as observed by CCI, had no appreciable adverse effect on competition as the market size is huge as compared to market share of SSI. Further, it was observed that with the presence of so many competitors in the relevant market and consumers having several options to choose from, SSI neither has a position of strength, which gives it the power to act/operate independently of its competitors, nor has the ability to affect its competitors and consumers in the market. Even from the franchisee's angle as a seller, it is evident that a franchisee has many options to opt for as a service provider in the market. Thus, CCI held that SSI was in not in a dominant position in the relevant market and hence, question of abuse does not arise. Considering the facts and analysis, CCI held that there was no prima facie case against SSI and thus, dismissed the case.

(Source: CCI Order dated May 13, 2015. For full text see CCI website)

INTERNATIONAL

Pakistan: CCP issues show cause notice to Nestlé Pakistan Limited for unreasonable increase in prices

The Competition Commission of Pakistan (CCP) has issued a show cause notice to Nestlé Pakistan Limited for alleged violation of section 3 (abuse of dominance) of the Competition Act, 2010 for unreasonably raising the prices of its infant and baby food products, Lactogen and Cerelac, over the past two years.

The show cause notice was followed by an enquiry by CCP into allegations regarding an unreasonable increase in the prices of Lactogen and Cerelac products by Nestlé over a period of two years. The enquiry report identified two relevant markets; one for domestically produced infant formula & follow-on milk; and the other for domestically-produced packaged cereal-based baby products. Nestle is likely a dominant undertaking in both markets on basis of its Lactogen and Cerelac products, respectively.

The enquiry report found that Nestlé increased the prices of Lactogen and Cerelac by 38% and 32%, respectively over two years, which did not correspond to the increase in costs nor was based on any justifiable business reasons. The report concluded that by unreasonably raising the prices of its products, Nestlé has, prima facie, abused its dominant position in the market thus violating the Competition Law.

(Source: Competition Commission of Pakistan: Press Release dated June 4, 2015)

EU: EC initiates investigation into Amazon's e-book distribution arrangements

The EC has initiated an investigation against Amazon in the distribution of electronic books ("e-books"). The EC in particular will investigate certain clauses included in Amazon's contracts with publishers. These clauses require publishers to inform Amazon about more favourable or alternative terms offered to Amazon's competitors and/or offer Amazon similar terms and conditions than to its competitors, or through other means ensure that Amazon is offered terms at least as good as those for its competitors. Such clauses may make it more difficult for other e-book distributors to compete with Amazon by developing new and innovative products and services. The EC will investigate whether such clauses may limit competition between different e-book distributors and may reduce choice for consumers. prohibit the abuse of a dominant market position and restrictive business practices. The EC will now investigate further whether such clauses may hinder the level playing field and potentially decrease competition between different e-book distributors to the detriment of consumers.

(Source: Official Journal of European Union dated June 11, 2015)

UK: Pfizer and Flynn Pharma accused of abuse of dominance.

The UK Competition and Markets Authority (CMA) has issued a STATEMENT OF OBJECTIONS to pharmaceutical suppliers Pfizer and Flynn Pharma against concerns of breaching UK and European competition law by selling AN epilepsy drug at an excessive price between 25 to 27 time higher than those previously charged. Pfizer, the US based pharma company, has a distribution agreement with Flynn Pharma for the sale of the said anti-epilepsy drug. CMA's provisional view is that the companies abused a dominant position by charging "excessive and unfair" prices for phenytoin sodium capsules.

(Source: Competition and Markets Authority: Press Release dated August 6, 2015)

Kazakhstan: Kcell to return approximately US$ 8 million to its customers for violation of competition laws

Kcell, one of Kazakhstan's biggest cellular operators, has been ordered to return more than 1.5 billion tenge (US$ 8 million approx.) unfairly charged to its customers, which resulted in violation of competition laws. The Antimonopoly Agency conducted investigations in 2014 on the basis of customers' complaints and held that Kcell had abused its dominant position and did not disconnect radiotelephone conversation or Internet access when the customer's balance reached zero, resulting in debt to the network provider.

(Source: The Astana Times: News Report dated August 7, 2015)

III. COMBINATION

CCI approves acquisition of four retail hypermarket stores of Jubilant by Aditya Birla Retail Limited (ABRL)

ADITYA BIRLA GROUP

JUBILANT INDUSTRIES

CCI by its order dated July 29, 2015 approved the proposed acquisition of four 'Total' stores of Jubilant Agri and Consumer Products Limited (JACPL) in the city of Bengaluru by ABRL on a slump sale basis.

ABRL is engaged in the retail business and operates supermarkets and hypermarketsunder the brand name 'more'. Apart from the retail business, it is also engaged in certain other activities such as holding investments, owning and leasing properties etc. ABRL operates hypermarkets and supermarkets in many states and union territories in India including 55 such retail stores in the city of Bengaluru. The retail stores of ABRL deal in following broad categories of products, viz., Grocery (including fruits and vegetables, staples etc.) general merchandise, consumer durables and IT, apparel & footwear and tobacco and tobacco related products.

JACPL is a wholly-owned subsidiary of Jubilant Industries Limited (JIL), is stated to be engaged in the businesses of agri-products, performance polymers, consumer products, food polymers, latex and retail

operations. JACPL operates Target stores under the brand name 'Total' in the city of Bengaluru only. Apart from the categories of products sold by the ABRL stores, JACPL stores also sell liquor & wine, storage solutions and furniture.

The CCI noted that for combination relating to retail stores, the relevant geographic market in typically local in nature. The retail industry is typically divided into modern brick and mortar stores and traditional brick and mortar stores. For the purposes of the present assessment, the analysis was carried out based on the catchment area(5 KMS) of the four target stores. ABRL and JACPL have a combined market share of less than 5 percent in the retail market in the city of Bengaluru. It has been observed from the submissions of the Acquirer that leading Indian organized retail business players such as, Bharti's Easyday, TATA's Star Bazaar, Future's Big Bazaar, D-Mart, Spencers, Godrej's Nature's Basket, Reliance Fresh and Reliance Mart, Spar, Hyper City, Heritage etc. are present in the city of Bengaluru as well as in the Local area. Some of these players are present in all the overlapping product categories.

Further, the unorganised retail business also exerts competitive constraint on the organised retail businesses in the city of Bengaluru. It is also stated in the notice that there are no vertical arrangements between ABRL and JACPL.

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

CCI approves the joint venture between Google and Johnson and Johnson for the research and development in respect of the robotic system for surgical intervention-

CCI by its order dated July 10, 2015 approved the proposed combination for creation of a JV between Google and Johnson and Johnson (J&J). Google would hold 70.1% equity shareholding in the JV; while J&J through its subsidiaries JJDC (23.1%) and Ethicon(6.8%) would control the remaining shareholding in the JV.

J&J is a multinational company, active inter-alia in the businesses of consumer healthcare, medical devices and pharmaceuticals. JJDC, a venture capital company specialising inter-alia in the area of health care and technology is stated to be engaged in identifying early market signals/indicators and strategic investment opportunities in its areas of specialties. Ethicon is stated to be active in manufacture and marketing of surgical technologies and solutions. Google's activities are primarily focused around areas such as, search, advertising, operating systems and platforms and enterprise including Gmail, Google Docs.

The CCI noted that the assets being contributed to the JV are located entirely outside India. Further, there is no horizontal or vertical relationship between the parties. CCI opined that the proposed combination is not likely to have any appreciable adverse effect on competition in India and therefore, approved the proposed combination under sub-section (1) of Section 31 of the Act.

(Source: CCI: Order dated July 10, 2015. For full text see CCI website)

CCI approves merger of Pfizer, Hospira, Inc. and Perkins Holding Company

CCI by its order dated June 11, 2015 approved the execution of an Agreement and Plan of Merger between Pfizer, Hospira, Inc. (Hospira) and Perkins Holding Company (Perkins), a wholly owned subsidiary of Pfizer. The proposed combination relates to the acquisition of 100 per cent of the equity share capital of Hospira by Pfizer. The proposed combination is structured as the merger of Perkins with and into Hospira, as a result of which the separate corporate existence of Perkins will cease and Hospira will survive as a wholly owned subsidiary of Pfizer. In terms of Regulation 14 of CCI (Procedure in regard to the transaction of business relating to combinations) Regulations, 2011 (Combination Regulations), Pfizer was required to remove certain defect(s) from the agreement. Pfizer also notified certain changes in the details of the products of the parties to the combination under Regulation 16.

It was informed that Hospira does not sell any injectable formulations and active pharmaceutical ingredients (APIs) in India and it only manufactures and sells few APIs in India. Whereas, Pfizer does not manufacture or sell any APIs in India and imports the APIs to manufacture formulations that it sells in India. Thus, there is no horizontal overlap between Pfizer and Hospira, as in India Pfizer is not present in the market for APIs, whereas Hospira is not present in the market for formulations.

CCI opined that the proposed combination is not likely to have any appreciable adverse effect on competition in India and therefore, approved the proposed combination under sub-section (1) of Section 31 of the Act.

(Source: CCI: Order dated June 11, 2015. For full text see CCI website)

CCI approves combination of Singbridge Pte. Ltd, Surbana International Consultants Holdings Pte. Ltd, Ascendas Pte. Ltd and Jurong International Holdings Pte Ltd.

CCI by its order dated May 21, 2015 approved the combinations of Singbridge Pte. Ltd. (Singbridge) and Surbana International Consultants Holdings Pte. Ltd. (Surbana) of Temasek Holdings (Private) Limited (Temasek) and,Ascendas Pte. Ltd (Ascendas) and Jurong International Holdings Pte Ltd (JIH) of JTC Corporation (JTC). Through the combination, Singbridge, Surbana, Ascendas and JIH would become indirect subsidiaries of TJ Holdings III whichwould be under joint control of Temasek and JTC. The combination falls under Section 5(a) of the Act. The entities were required to remove defects from the agreement in pursuance of Regulation 14 of Combination Regulations. It was observed that the parties to the combination are primarily engaged in the businesses of providing real estate development and related services and building / project consultancy services. In the real estate development and related services market, the parties to the combination have an insignificant market share not only in India but also in the various cities where they are present. Besides, there are several other major players such as DLF, Raheja

and Larsen & Toubro etc. providing similar services in different cities of India. Similarly, it was observed that in building and project consultancy services, the parties to the combination have insignificant market share and several major players such as AECOM India, RSP Design Consultants, CPG Consultants, Meinhardt India etc. are present in India, apart from the parties. Considering the facts and information provided, CCI concluded that the combination will not amount to appreciable adverse effect on the competition and thus, approved the combination under Section 31(1).

(Source: CCI: Order dated May 21, 2015. For full text see CCI website)

CCI approves combination between General Electric Company, GE Industrial France SAS, Alstom and Alstom Holdings

CCI by its order dated May 5, 2015 approved the acquisition proposed by General Electric Company (GE), GE Industrial France SAS; Alstom and Alstom Holdings.

The combination relates to the acquisition of Alstom's thermal power, renewable power and grid businesses by GE and its group companies, the formation of joint ventures (JVs) i.e. the Grid and Digital Energy JV, the Renewables JV and the Global Nuclear and French Steam JV, between GE and Alstom in which Alstom will hold a minority shareholding, and acquisition of the signaling business of GE by Alstom. To execute the acquisition, they entered into the Master Agreement, Formation Agreement with respect to the Grid and Digital Energy JV, Formation Agreement with respect to the Renewables JV, Formation Agreement with respect to the Global Nuclear and French Steam JV, and Master Purchase Agreement. Companies were required to remove defects and provide information under Regulation 14 of the CCI (Procedure in regard to the transaction of business relating to combinations) Regulations, 2011. The proposed combination was assessed by CCI under thermal power business, renewable energy business, grid business, signaling business. CCI observed that companies did not possess the relevant market share and thus, the combination would not resulting appreciable adverse effect on the competition. Considering the facts and relevant factors, CCI approved the acquisition under Section 31(1).

(Source: CCI: Order dated May 5, 2015. For full text see CCI website)

CCI approves combination proposed by Johnson Control Inc.

CCI vide its order dated May 7, 2015 approved the combination between Johnson Control Inc. (JCI), Hitachi Ltd. (Hitachi), and Hitachi Appliances, Inc. (HA). The proposed combination entails the acquisition of worldwide building heating, ventilation and air conditioning (HVAC) business (excluding certain operations and assets) of HA, a wholly owned subsidiary of Hitachi, by JCI, through Johnson Controls Air Conditioning Holding (UK) Ltd. (JCAC), a newly incorporated company created for the purpose of the proposed combination. JCAC would become a global 60:40 joint venture company between

JCI and HA pursuant to the proposed combination. They were required to remove defects and provide information under Regulation 14 of the CCI (Procedure in regard to transaction of business relating to combinations) Regulations, 2011. CCI observed that the market is characterized by various domestic and international players. Further, companies have insignificant market share. Considering the factors and assessment, CCI approved the acquisition under Section 30(1).

(Source: CCI: Order dated May 07, 2015. For full text see CCI website)

CCI approves acquisition of Bharti AXA Life Insurance Company Limited and Bharti AXA General Insurance Company Limited by AXA India Holdings and SociétéBeaujon

CCI vide its order dated May 13, 2015 gave assent to acquisition of Bharti AXA Life Insurance Company Limited (BAL) and Bharti AXA General Insurance Company Limited (BAGI) by AXA India Holdings (AXA)and SociétéBeaujon (SB). The combination proposed an acquisition of additional shares by AXA and SB (directly or through their group companies) in their existing joint venture companies, i.e., BAL and BAGI, respectively (collectively referred to as acquired companies). The acquisition would be made by way of purchase of shares from Bharti Insurance Holdings Private Limited (BIHPL), one of the existing shareholders in the BAL and BAGI. Whereas, AXA group holds 26 per cent shares in each of the Target Companies at present, post combination, it will hold 49 per cent in each of them. The remaining 51 per cent shares in the acquired companies will continue to be held by Bharti group companies. After assessing the facts and information available, CCI approved the proposal under Section 30(1).

(Source: CCI: Order dated May 13, 2015. For full text see CCI website)

INTERNATIONAL

France: Competition authority clears acquisition of Totalgaz by UGI, France

The EC referred to French Competition Authority review of the acquisition of the company Totalgaz SAS (hereinafter "Totalgaz"), a subsidiary of the Total group, by UGI France, the parent company of Antargaz. Antargaz and Totalgaz are both present in France on the markets for bottled LPG, fuel LPG and LPG sold in mini-bulk (for filling private tanks) as well as in intermediate and large-bulk (for filling professional tanks).

After a detailed assessment, the Authority found that the merger would significantly strengthen Antargaz's presence at a national level on the intermediate and large-bulk LPG market. On the mini-bulk LPG markets, the new entity would hold a particularly high market share in eleven local areas. The Authority likewise observed that competing LPG distributors would not be in a position to exert sufficient competitive pressure to constrain the new entity's behavior, in particular in relation to price.

The new entity has agreed to certain conditions as stipulated by the Authority to regulate the competition.

(Source: Competition Authority, France: Press Release dated May 18, 2015)

Poland: Competition Authority approves Southbank Media's acquisition of N-Vision

The Office of Competition and Consumer Protection (UOKiK) approved the acquisition of N-Vision, a leading Polish media company which owns TVN television channels, by Southbank Media, a unit of Scripps Networks Interactive. UOKiK's analysis of the transaction showed that the acquisition will affect the TV advertising market, particularly the sale of TV commercial time, but will not lessen competition because Southbank's market share in Poland is currently marginal. Following the acquisition, Southbank Media will face competition from public broadcaster Telewizja Polska and private Cyfrowy Polsat. During its assessment of the transaction, UOKiK consulted TV broadcasting companies and the largest advertisers to assess the acquisition and the effect it will have on Poland's national TV advertising market. The Office of Electronic Communications and National Broadcasting Council were also consulted.

(Source: Competition Authority, Poland: Press Release dated June 16, 2015)

EU: EC approves acquisition of TSB by Sabadell; major step in restructuring plan of Lloyds Banking Group

The EC by its order dated May 18, 2015 has approved the acquisition of TSB Banking Group plc, a British retail and commercial banking services provider, by Banco de Sabadell, S.A. of Spain. TSB is a spin-off of Lloyds Banking Group (Lloyds). With the complete divestment of TSB, Lloyds has fulfilled a key measure under its restructuring plan to limit distortions of competition created by the public aid Lloyds received during the financial crisis. Having the backing of a larger banking group like Sabadell will enhance TSB's ability to compete as a challenger bank and stimulate competition in the British retail banking markets, to the benefit of UK consumers. In May 2014, the EC approved proposals by the UK authorities to amend conditions for the divestment of Lloyds' UK retail business, in the context of Lloyds's restructuring plan, as in line with EU state aid rules. This included a prolongation of the deadline for the disposal of TSB from 30 November 2013 to 31 December 2015. Lloyds had initially tried to divest TSB by proposing to transfer its customers, branches, assets and liabilities to a trade buyer with existing banking operations in the UK. However, no trade buyer could be found. The EC also approved a reduction of the perimeter of the divestment as compared to the commitment in the original restructuring plan, in exchange for other measures strengthening its capital position and profitability.

(Source: European Commission: Press Release dated May 18, 2015)

IV. MISCELLANEOUS NEWS

INDIA

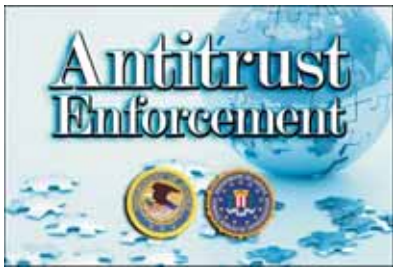
Justice(Retd.) G.P. Mittal joins as a member of CCI

Justice (Retd.) G.P. Mittal, former judge of the High Court of Delhi has joined CCI as a member with effect from July 9, 2015. Justice Mittal vacated his office effective July 8, 2015 through resignation under Article 217 of the Constitution.

Justice Mittal is a Gold-Medallist in law from Kurukshetra University, Kurukshetra. He joined Delhi Judicial Services in 1977. He was promoted to Delhi Higher Judicial Service in the year 1996 and worked as Additional Sessions Judge, Additional District Judge, Motor Accident Claim Tribunal, Special Judge(CBI). He worked as Judge in charge of Delhi Mediation Centre at Tis Hazari Courts and imparted training in mediation to the first batch of judicial officers in the District Courts. He was appointed as Principal Secretary(Law & Justice), Government of NCT of Delhi in January, 2008. He was appointed as District & Sessions Judge, Delhi/Rent Control Tribunal, Delhi in May, 2009. He was appointed as Additional Judge of Delhi High Court on 29th October, 2010 and vacated office in the afternoon of July 8, 2015.

INTERNATIONAL

United States(US): Extra-territorial application of US Antitrust Laws



The US Supreme Court by its decision dated June 15, 2015 has rejected Motorola's civil appeal to recover damages from an international TFT-LCD price-fixing cartel in relation to high prices charged from Motorola's foreign subsidiaries, despite the fact that a large percentage of the phones assembled overseas were subsequently sold in the US.The appeals revolved around application of the Foreign Trade Antitrust Improvements Act, 1982 (FTAIA) to the international TFT-LCD panel price-fixing cartel. The Supreme Court upheld lower court's ruling that Motorola's foreign subsidiaries were independent legal entities for tax purposes and the foreign subsidiaries were direct purchasers of LCD screens. Motorola's foreign subsidiaries were injured in foreign commerce—in dealings with other foreign companies—and to give Motorola rights to take the place of its foreign companies and sue on their behalf under US antitrust law would be an unjustified interference with the right of foreign nations to regulate their own economies. Since the products were sold in the US, the FTAIA gives the power to Department of Justice (DoJ) to prosecute criminal cartels. However, that does not mean the same conduct gives rise to antitrust damages remedy for US-based companies, like Motorola, who were only derivatively injured by the price-fixing cartel.

(Source: Motorola Mobility LLC v. AUOptronics, US Supreme Court decision dated June 15, 2015)

US: Criminal Antitrust Anti-Retaliation Act of 2015 passed by the Senate

The US Senate passed the Criminal Antitrust Anti-Retaliation Act (CAARA) on July 22, 2015. CAARA provides anti-retaliation protection to whistleblowers (covered individuals) who give information to

their employer or to the federal government concerning criminal violations of antitrust laws. CAARA prohibits an employer from retaliating against a covered individual who provides information relating to "any violation of, or any act or omission the covered individual reasonably believes to be a violation of, the antitrust laws."The persons covered under this Act are employees, contractors, subcontractors, or agents of an employer. The term "employer" includes "person, or any officer, employee, contractor, subcontractor or agent of such person." Moreover, "federal government" has been defined in this Act to include any Federal regulatory or law enforcement agency, as well as any member of Congress.

(Source: https://www.congress.gov/bill/114th-congress/senate-bill/1599/text)

Netherland: Court of Appeals allows use of wiretap by Competition Authority

Dutch Trade and Industry Appeals Tribunal by it order dated July 9, 2015, annulled two judgments of the Rotterdam District Court and held that the Authority for Consumers and Market (ACM), the competition authority, can rely on evidence obtained through wiretaps by other governmental authorities for the purpose of criminal investigations. However, the ACM does not have the power to tap phones itself. The Court of Appeal concluded that wiretaps provided to the ACM qualify as criminal law information and that no legal ground requiring an assessment of the Public Prosecutor is necessary prior to the issuance of data to the ACM. The only requirement for the issuance of wiretaps is the necessity to preserve substantial general interest which is fulfilled by cartel prohibition. The judgment confirms that exchanging evidence by Government authorities is valid, even if the receiving authority lacks power to collect such evidence using wiretap.

(Source: http://www.cms-lawnow.com/ealerts/2015/07/dutch-court-of-appeal-allows-the-use-of-wiretaps-by-competition-watchdog)

We may be contacted at: **www.vaishlaw.com**

NEW DELHI
1st & 11th Floor, Mohan Dev Bldg.
13 Tolstoy Marg
New Delhi - 110001, India
Phone: +91-11-4249 2525
Fax: +91-11-23320484
delhi@vaishlaw.com

MUMBAI
106, Peninsula Centre
Dr. S. S. Rao Road, Parel
Mumbai - 400012, India
Phone: +91-22-4213 4101
Fax: +91-22-4213 4102
mumbai@vaishlaw.com

GURGAON
803, Tower A, Signature Towers
South City-I, NH-8
Gurgaon - 122001, India
Phone: +91-124-454 1000
Fax: +91-124-454 1010
gurgaon@vaishlaw.com

BENGALURU
Unit No. 305, 3rd Floor
Prestige Meridian-II, Building No. 30
M.G. Road, Bengaluru - 560001, India
Phone: +91-80-40903581/ 88 /89
Fax: +91-80-40903584
bangalore@vaishlaw.com

Editor: M M Sharma
Editorial Team: Vinay Vaish, Satwinder Singh, Deepika Rajpal