



The Quarterly Newsletter of Competition Commission of India (CCI)

Fair Play

VOLUME 23 : OCTOBER - DECEMBER 2017



Mr. Devender K. Sikri, Chairperson, CCI addressing the gathering at OECD/Korea Policy Centre Competition Law Workshop at New Delhi, India

In This Issue...



3

**FROM THE DESK OF
THE CHAIRPERSON**



4

IN FOCUS
**Collusions in Procurement
Bid Rigging**



6

**SECTION 3 & 4
ORDERS**



8

**SECTION 5 & 6
ORDERS**



10

INVESTIGATIONS INITIATED



11

**FORTHCOMING
EVENTS**



12

**ENGAGING WITH
THE WORLD**



14

ADVOCACY INITIATIVES



18

**DEVELOPMENTS IN OTHER
JURISDICTIONS**



20

CAPACITY BUILDING EVENTS



21

ECO WATCH



22

**KNOW YOUR
COMPETITION LAW**



23

**JUDICIAL
PRONOUNCEMENTS**

FROM THE DESK OF THE CHAIRPERSON



Market distortions that result from anti-competitive activities of cartels formed by firms across the world, both industrialised and transitional economies, such as India, have increasingly drawn the attention of competition authorities and multilateral agencies like Organisation for Economic Cooperation and Development (OECD), United National Centre for Trade & Development (UNCTAD) and World Bank. Given the significance of huge cost to the economy, competition authorities and multilateral agencies have carried out extensive work to help governments, public procurement agencies and officials to understand the risks, costs and forms of cartels as well as measures to prevent, detect and punish it. In this regard, one of the important initiatives undertaken by CCI in collaboration with OECD Korea Policy Centre was to organize a Workshop on Best Practices in Cartel Procedures during October 24-26, 2017 in New Delhi.

The workshop was attended by delegates from competition authorities of Asia Pacific Region along with CCI officers. It focused on fighting “Hard Core” cartels, including bid-rigging. The objective of the workshop was to equip competition authorities with the necessary know-how for detecting and deterring cartels, with an emphasis on evidence gathering and best practices on investigative steps that may be taken to build cases from scratch.

The theme for ‘In-focus’ article in this issue also deals with finding solutions to the problem of bid-rigging in public procurement. Among other things, bid-rigging in public procurement markets raises cost of the orders above competitive levels and thus causes loss of limited public funds at the disposal of the exchequer. The lost funds, if saved, will be available for use for other alternative purposes. Empirical evidence across globe has shown that significant savings can accrue to the exchequer if the menace of bid-rigging is handled effectively and procurement process follows fair competition.

Competition advocacy with officers engaged in public procurement at Central as well as at State level is another important measure taken being pursued by the Commission to raise awareness and build capacity for fighting bid-rigging in public procurement. The new Manual for Procurement issued by Ministry of Finance, Government of India, in 2017 has included relevant provisions of the Act regarding public procurement and bid-rigging. This is a significant step towards building capacity of procurement officials in the Government.

There is an important event scheduled in March 2018 – ICN Annual Conference, 2018, which will be hosted by CCI at New Delhi from 21- 23 March. A special project on “Cartel Enforcement and Competition” has been undertaken by CCI for the conference. For this, we have reached out to various enterprises, associations and government departments for their inputs on awareness of competition issues. This project report will be presented at the conference in which nearly 500 delegates from nearly 120 countries, including India, will participate. Representatives of competition agencies, including the Heads, representatives of UNCTAD, OECD will also be sharing their experiences at the conference. We hope that confluence of such large contingent, with exposure to diverse competition issues will enrich the knowledge of the competition community in their future endeavours

(Devender K. Sikri)

Collusions in Procurement: Bid Rigging

Worldwide public procurement accounts for approx. 15% of the GDP. However, in India this figure is around 30%, owing to continued involvement in sectors such as railways, defence, healthcare and telecommunications etc. Public procurement means obtaining or purchasing of goods and services by any government department, statutory authority or public sector entity. The scale of procurement through public resources makes it an important activity of the economy. Public authorities try to meet multiple objectives through public procurement, such as achieving value for money through transparent and fair procurement process, promoting innovation, ensuring equality of opportunity for all businesses, particularly SMEs, ensuring quality, effective service delivery and diversifying supplier base. Achieving these multiple objectives simultaneously may appear very difficult but the process and instrument of market competition makes it easier.

Trust in market competition and involvement of public money in public procurement have favored a system of open tendering which fulfills the criteria of fairness, transparency, non-discrimination and value for money. Even, the Hon'ble Supreme Court in *Nagar Nigam, Meerut v. Al Faheem Meat Exports Private Limited [(2006) 13 SCC 382]*, stated that:

"...The law is, thus, cleared that ordinarily all contracts by the Government or by an instrumentality of the State should be granted only by public auction or by inviting tenders, after advertising the same in well-known newspapers having wide circulation, so that all eligible persons will have opportunity to bid in the bid, and there is total transparency. In our opinion this is

an essential requirement in democracy, where people are supreme, and all official acts must be actuated by the public interest, and should inspire public confidence...."

Even though at the central government level, there is no single, separate and exclusive law (Act) which governs public procurement, in order to ensure achieving the objectives of public procurement with fairness and transparency, various policies, rules, guidelines and manuals have been prescribed by the government authorities. Important among them are: General Financial Rules (GFRs), Delegation of Financial Powers Rules (DFPRs) issued by Ministry of Finance (MoF), Public Procurement Manuals for Goods as well as for Services issued by MoF and other department procurement manuals. Among other things, these manuals and rules emphasize on, fairness in procedure, non-restrictive bidding conditions for free market, transparency of bidding and evaluation process and accountability

However, not enough emphasis has been given to the nuances of competition concerns which could be a central point in public procurement. Such concerns may arise from both sides of the tendering process i.e. tendering authority/procurer and bidding firms. At times, the practices and procedures adopted by tendering authorities and bidding firms may result in anti-competitive behavior leading to disruption in smooth procurement process. Sometimes, procurers may impose certain unfair conditions or put restrictions which may result in denial of market access or may create entry barriers that may have anti-competitive impact in the market. These restrictions are pre-qualification criteria, registration of suppliers or approved vendors only

etc. to name a few.

On the other hand, bidding firms may collude or rig bids in tender which have an inimical effect on the market. The practice of bid-rigging is typically regarded as one of the most "hard-core" cartel offences as it is designed to give an appearance of genuine competition but has the potential to cause significant financial detriment to public procurement. Bid Rigging is one of the horizontal agreement i.e. agreement between firms dealing in identical products, by which bidding firms coordinate their bids on procurement and destroys the basic foundation i.e. competitive rate quoting in tender process. In the process they apportion and distribute the additional profits obtained as a result of the higher final contracted price among the conspirators much to the detriment of the national and local government agencies. Big Rigging, in any, be it collusive bidding or bid rotation or cover bidding or bid suppression or market allocation, is done with a motive to reduce or distort competition and earn super normal profits.

The Competition Act 2002 (Act), provides for the establishment of Competition Commission of India (CCI/the Commission) to promote and sustain competition in markets; prevent practices having adverse effect on competition; protect consumer interest; and ensure freedom of trade carried on by participants in Indian markets. It prohibits any agreement or understanding between enterprises/persons which causes, or is likely to cause, appreciable adverse effect on competition (AAEC) in markets in India. Cartels, price fixing and bid rigging in any form are prohibited and have been made punishable offence under the Act.

Commission is also empowered under Section 27 of the Act to impose on each person or enterprise which are parties to bid rigging agreements, a penalty of up to 10% of the average turnover for the last three preceding financial years or three times of its profits for each year of continuance of such agreement in case of cartels. The penalty can therefore be severe, and result in heavy financial and other cost on the erring party.

The Commission, over the past nine years, has conducted investigations and passed orders on bid rigging cases. Most of the cases were triggered by complaints by the procurers', NGO, CBI or taken up by Commission on its own (suo-moto). Commission may take variety of actions where it finds breach of the Act. In almost every case it orders 'cease and desist'. The Commission's findings while penalizing the erring bidders have been upheld by the erstwhile COMPAT and the Hon'ble Supreme Court in a case regarding bid rigging and boycott of tenders floated by Food Corporation of India (FCI) for procurement of Aluminium Phosphide Tablets required for preservation of food grains. However, the extent of bid rigging in public procurement in India is so just the tip of iceberg and fighting bid rigging would require evolving alternate strategies.

Over the years, the Organization for Economic Co-operation and Development (OECD) has developed extensive work to help governments, public procurement agencies and officials understand the risks, cost and forms of bid rigging, and prevent, detect and punish it. The OECD has researched and developed recommendation on fighting cartels which incorporates the guidelines and consolidates OECD good practices to make public procurement process competitive and free from collusion. The following areas have

been identified by the recommendation which calls for an action:

1. Assess public procurement laws and practices and how they affect collusion between bidders.
2. Deter bid rigging at the front end of public procurement, by designing procurement regulations and public tenders which promote competition and reduce the risk of collusion.
3. Ensure that public procurement officials are aware of market structures and bidding behavior that may indicate collusion, so that suspicious activities can be detected, reported to competition authorities and investigated.
4. Measure and monitor the impact of public procurement laws and regulations on competition over time.

Similarly, experience of enforcing the law over the last eight years in India, indicates that one of the main reasons for bid rigging in public procurement has been the lack of awareness and ignorance of nuances of the competition law among the public officials. This has also been reinforced by our interactions with public officials in various advocacy programmes and in our recent survey for the International Competition Network (ICN) Special Project on Cartel. Realizing the importance of public procurement, extent of bid riggings and low level of awareness about competition issues among public officials, the Commission has made it a priority area of advocacy and capacity building of public officials. To this end the Commission has already engaged itself with various government academies for making public officials aware of the nuances of competition laws through the actual cases and competition

issues that have been brought before the Commission. More than 3500 senior and mid-level public officials have been sensitized about the competition issues in collaboration with government academies and institutes especially officials dealing with these issues in the defense, railways and healthcare sectors. Further, the Commission is developing study material and tools for capacity building to equip public officials on competition concerns in public procurement and means to identify bid rigging.

The Commission appreciates that the effectiveness of public procurement and its ability to contribute towards maximizing economic efficiency is dependent upon existence of competition in this key area of its economic activity. Therefore, a two pronged strategy to detect and prosecute bid rigging affecting public procurement and building capacity of government officials through its advocacy efforts has been the mainstay of the approach of the Commission. The Manual for Procurement of Good, 2017, now has a chapter on Competition Act and role of competition in public procurement. The issues involving public procurement are very complex and should be addressed from both economic and social dimension. Cost saving, quality and efficiency are the necessary ingredients of the procurement process. Commission's effective advocacy and outreach to sensitize public procurement officials regarding anti-competitive behavior of the bidders will be an effective contribution to combat collusion. Government on the other hand is really pushing procurers to adopt online tender process to ensure transparency as efficient public procurement helps government to fulfill their economic goals and to deliver the needs of their citizens which restores trust in public.

SECTION 3 & 4 ORDERS

CCI Imposed Penalty on BCCI for Abusing its Dominant Position

The Competition Commission of India (CCI) found Board of Control for Cricket in India (BCCI) to be in contravention of the provisions of Section 4(1) read with Section 4(2)(c) of the Competition Act, 2002 (Competition Act) for its assurance to the broadcasters of Indian Premier League (IPL) that BCCI shall not organize, sanction, recognize, or support another professional domestic Indian T20 competition that is competitive to IPL, for a sustained period of ten years.

Earlier, CCI vide order dated February 08, 2013 found BCCI abusing its dominant position but on appeal by BCCI to the erstwhile competition appellate body, COMPAT, on February 23, 2015, remitted the matter to the CCI for fresh disposal on the ground of violation of principle of natural justice by the CCI. Thereafter, CCI vide order dated May 05, 2015 directed the Director General (DG) to conduct further investigation according to the directions of the Hon'ble COMPAT. After a detailed investigation by the Director General (DG), the CCI found BCCI to enjoy dominant position in the relevant market for organisation of professional domestic cricket leagues/ events in India. Based on the nature of activities performed, BCCI was held as an enterprise and thus, was subjected to the provisions of the Competition Act. In its detailed order passed on November

29, 2017, the CCI observed that competition cases relating to sports associations/ federations usually arise due to the conflict between their regulatory functions and their economic activities. The CCI also recognized the role of sports federation in taking measures to serve the integrity or development of the sport. However, in the facts and circumstances of the case, CCI found that the impugned restriction had no nexus to the legitimate interest of cricket in the country. Rather, the restriction was pursued by BCCI to enhance the commercial interest of the bidders of IPL broadcasting rights and the consideration in turn received by BCCI. Such restriction, without any plausible justification, was held to be denial of market access for organization of professional domestic cricket leagues/ events in India, in contravention of the provisions of Section 4(1) read with Section 4(2)(c) of the Act.

Accordingly, in an order passed on November 29, 2017, CCI directed that:

- (a) BCCI shall cease and desist from indulging into the conduct that was found to be in contravention of Section 4 of the Act;
- (b) BCCI shall not place blanket restriction on organisation of professional domestic cricket league/ events by non-members.

This shall, however, not preclude BCCI from stipulating conditions while framing/ modifying relevant rules for approval or while granting specific approvals, that are necessary to serve the interest of the sport. Such changes shall entail norms that underpin principles of non-discrimination and shall be applied in a fair, transparent and equitable manner;

- (c) Having done the above, BCCI shall issue appropriate clarification regarding the rules applicable for organisation of professional domestic cricket leagues/ events in India, either by members of BCCI or by third parties, as well as the parameters based on which applications can be made and would be considered. Besides, BCCI shall take all possible measure(s) to ensure that competition is not impeded while preserving the objective of development of cricket in the country; and
- (d) BCCI shall file a report to the CCI on the compliance of the aforesaid directions from (a) to (c) within a period of 60 days from the receipt of CCI's order.

A penalty of INR 52.24 crore has also been imposed on BCCI for indulging into the anti-competitive conduct.

CCI Issues Order against GIL, ABCIL and GACL for Bid Rigging

In a reference no. 03 of 2013 filed by the Delhi Jal Board, the Competition Commission of India (CCI) vide order dated October 05, 2017 found

Grasim Industries Limited (GIL), Aditya Birla Chemicals (India) Ltd. (ABCIL) and Gujarat Alkalies and Chemicals Ltd. (GACL) to be in

contravention of the provisions of Section 3(1) read with Section 3(3)(d) of the Competition Act, 2002 for rigging Delhi Jal Board tenders

which were floated for procurement of Poly Aluminium Chloride (PAC) which is used for purification of water.

While rejecting the plea of being single economic entity taken by GIL and ABCIL, CCI noted in the order that these two companies are not only separate legal entities but also have participated in these tenders individually and separately. Further, CCI noted that the concept of single economic entity has no application in the context of the proceedings initiated under Section 3 of the Act, especially in a case of bid rigging/collusive bidding.

Apart from issuing a cease and desist order against the above companies, CCI has imposed a penalty of Rs. 2.30 crore, Rs. 2.09 crore and Rs. 1.88 crore upon GIL, ABCIL and GACL for the anti-competitive conduct. The penalty has been levied @ 8 % of the average relevant turnover of GIL and ABCIL of preceding three years. In case of GACL, penalty has been levied @ 6 % of the average relevant turnover of preceding three years. The conduct of GIL and ABCIL was noted by the CCI as egregious as these companies while apparently submitting separate bids, prepared

and finalised the same through common channels creating a façade of competitive landscape.

CCI also vide same above order passed in another reference no. 04 of 2013 filed by DJB in respect of alleged bid rigging in the tenders floated for Liquid Chlorine- another chemical used for purification of water, CCI found no contravention as no analysis was done by the Director General with respect to basic price, transportation cost, taxes and policy of profit margin of the parties as was done in the previous reference.

All-India Film Employees Confederation (AIFEC) and its Affiliates Found Engaging in Anti-Competitive Practices

In the case of Vipul A Shah vs. All India Film Employees Confederation (AIFEC) and Ors. (Case No. 19 of 2014), the Competition Commission of India (CCI) found All-India Film Employees Confederation, Federation of Western India Cine Employees (FWICE) & its affiliates and three producer associations i.e. Indian Motion Picture Producers Association (IMPPA), Film and Television Producers Guild of India (FTPGI) and Indian Film and Television Producers Council (IFTPC) in contravention of provisions of Section 3 of the Competition Act, 2002 (the 'Act').

The Informant, Vipul Shah, approached the CCI alleging that some of the provisions of the Memorandum of Understanding (MoU) dated October 01, 2010 signed between FWICE and producer associations i.e. IMPPA, FTPGI and IFTPC relating to

member-to-member working, fixation of wages, charging for extra-shift, etc. are anti-competitive.

Even though the Opposite Parties argued that the practice adopted in the MoU dated October 01, 2010 was in existence since 1966 and the MoU is a mechanism to resolve disputes between the producers and the craftsmen employed the producers, the CCI found that Clause 6 of the said MoU which mandated that the producer can only engage with the members of FWICE and its affiliates and Clause 18 of the said MoU which provided for the constitution of vigilance committee to enforce Clause 6 are in violation of Section 3(3)(b) read with Section 3(1) of the Act. Further, engagement of dancers/ fighters in the ratio of 70:30 wherein producers could engage only 70% of the dancers from Mumbai and rest 30% of his choice is also found to be in contravention of

Section 3(3)(c) read with Section 3(1) of the Act. Contrary to the claim of the parties that being trade unions they are governed only by the provisions of Trade Union Act, 1926, the CCI in its order also noted that trade unions enjoy no immunity or exemption for their conduct which contravenes the provisions of the Act.

Accordingly, the CCI issued a cease and desist order against the aforesaid associations in respect of the conduct found to be in contravention of the Act. However, no monetary penalty was imposed on any of the associations as CCI, taking into account the peculiarity of facts and totality of circumstances, noted that some of the parties to the MoU is an association of daily wage earners and practice was in existence since 1966.

SECTION 5 & 6 ORDERS

Commission Approves Combination between Agrium Inc. and Potash Corporation of Saskatchewan, Inc. Subject to Certain Modifications

Agrium Inc. (Agrium) and Potash Corporation of Saskatchewan, Inc. (PCS) filed a notice for their proposed merger of equals transaction.

Agrium, incorporated under the laws of Canada and listed on the Toronto and New York stock exchanges, is a producer of primary crop nutrients and a direct-to-grower distributor of crop inputs, services and solutions. PCS, incorporated under the laws of Canada and listed on the Toronto and New York stock exchanges, is a producer of fertilizers and related products. Agrium and PCS are equal shareholders in Canpotex Limited (Canpotex) along with Mosaic Canada Crop Nutrition, LP (Mosaic). Canpotex is the exclusive worldwide (excluding Canada and the United States) distributor of potash produced by Agrium, PCS and Mosaic in Canada.

The Commission observed that the Agrium and PCS are directly or indirectly involved in sale of: (i) potash; (ii) nutritionals and adjuvants; and (iii) phosphates in India. While both Agrium and PCS are present in the Indian potash market through Canpotex, the latter is also involved in sale of potash in India through Arab Potash Company (APC), Sociedad Quimicay Minera (SQM) and Israel Chemicals Limited (ICL) by virtue of holding ownership interests.

Based on the presence of the parties, for the purpose of competition assessment, the Commission identified potash as an area of significant product overlaps between the parties in India.

The Commission observed that the proposed combination leads to

strengthening of the exclusive joint venture of the Parties, i.e., Canpotex due to reduction in number of shareholders of Canpotex from three to two and consequent reduction in competitive constraints exercised by shareholders and leading to greater alignment of interests and incentives of the shareholders controlling Canpotex. The Commission was of the view that the significance of competitive constraints exercised by each member of a joint venture and its relevance on competition and change in competitive constraints are demonstrated in disintegration of Belarusian Potash Company (BPC), a joint venture of Russian firm Uralkali and Belarusian firm Belaruskali. The competitive constraints emanating from differences in incentives of Belaruskali and Uralkali lead to disintegration of the joint venture in 2013 and the same lead to substantial reduction in global prices of potash.

The Commission noted that Canpotex, APC, ICL and SQM collectively account for 45 to 50 percent of the Indian potash market and observed that potash market is highly concentrated and any further increase in concentration may lead to adverse effects on competition. Further, the proposed combination, to a large extent, denies market an opportunity to create situations where it could have benefitted from probable disintegration of Canpotex thereby reinforcing the coordinated effects. The coordinated effects are further likely to arise because of the parties' ability to control/materially influence other companies having operations in Indian potash market such as APC, SQM and ICL.

Considering the facts on record and the details provided in the notice given under Section 6(2) of the Act and assessment of the proposed combination on the basis of factors stated in section 20(4) of the Act, the Commission was of the opinion that the proposed combination is likely to have an appreciable adverse effect on competition (AAEC) in the market for potash in India.

Accordingly, the Commission proposed modification to the Proposed Combination, to the Parties in terms of Section 31(3) of the Act (Modification). The Modification required that the Parties shall divest all shares that PCS holds in APC, ICL and SQM. Further, the Modification also provided for mode, manner and conditions of implementation of modification.

The Parties submitted certain amendments to the Modification under Section 31(6) of the Act (Amendment Proposal). The Amendment Proposal envisaged divestment of all of PCS's shareholding in APC and ICL as against the divestment of all of PCS's shareholding in APC, ICL and SQM envisaged in the Modification. Apart from the amendment in the modification, the Parties also proposed certain amendments regarding mode, manner and conditions of implementation of modification. The Commission observed that proposed combination has the impact of increasing the global concentration levels which also raise concerns of coordinated effects, the Modification was intended to eliminate complete presence of the parties in India other than through Canpotex, apart from

reducing concentration at global level. In view of the same, the Commission decided that the Amendment Proposal does not fully address the AAEC concerns and therefore cannot be accepted.

The Parties filed an appeal with Hon'ble National Company Law Appellate Tribunal (NCLAT) against the directions of the Commission. During the appeal process, pursuant to the directions of the NCLAT, the parties engaged with the Commission for discussion and subsequently agreed to the Modification. The parties proposed

certain changes in the mode, manner and conditions of implementation of divestiture. Regarding the mode, manner and conditions of implementation of modification, the Commission noted that the changes proposed do not have a material effect and hence, it has no objections to the same. The position of the Commission on the proposal submitted by the parties was informed to the NCLAT during the course of hearing and NCLAT, in its order held that the proposed modified terms be treated to be the terms and conditions approved by

the Appellate Tribunal and disposed of the appeal. Pursuant to the above, the Commission approved the proposed combination under Section 31(7) of the Act, subject to the Parties carrying out the modification to the proposed combination as approved by the NCLAT.

For more details, please refer to CCI's Order at –

http://www.cci.gov.in/sites/default/files/Notice_order_document/36%20Order_C-2016-10-443.pdf

Commission Approves Acquisition of Consumer Mobile Business Currently Run by Tata Teleservices Limited and Tata Teleservices (Maharashtra) Limited by Bharti Airtel Limited

Bharti Airtel Limited (Airtel) filed a notice for acquisition of 100 percent of the consumer mobile business currently run by Tata Teleservices Limited (TTSL) and Tata Teleservices (Maharashtra) Limited (TTML) (Tata CMB) by Airtel.

Airtel, a part of Bharti Enterprises group, is a publicly traded global telecommunications corporation with operations in 17 countries across Asia and Africa. It is engaged in provision of various B2C and B2B telecommunication services. TTSL, a part of Tata Group, is engaged in the business of wired telephone service, wireless telephone service and Internet and broadband services in a number of telecom circles in India. TTML is an associate company of TTSL and is a telecom service provider in Maharashtra.

The Commission observed that activities of Airtel and Tata CMB relating to retail mobile telephony services overlap in Karnataka, Andhra Pradesh, Tamil Nadu, Madhya Pradesh, UP (East), UP (West), Punjab, Haryana, Gujarat, Delhi, Kolkata, Kerala, Odisha, Bihar, Rajasthan, West Bengal,

Himachal Pradesh, Mumbai and Maharashtra telecom circles.

The Commission observed that market in all overlapping telecom circles is highly concentrated and the proposed combination is likely to increase level of concentration significantly as reflected by the incremental HHI in all the telecom circles (except West Bengal and Himachal Pradesh). As regards the impact on spectrum holdings, the Commission noted that the Airtel's spectrum holding may exceed Spectrum Caps as prescribed in the DoT Merger Guidelines and Spectrum Trading Guidelines in Bihar telecom circle. However, based on examination of spectrum holding of different telecom service providers (TSPs) in all overlapping telecom circles, the Commission noted that the spectrum seems to be fairly distributed between the various TSPs and that there is a significant quantity of unsold spectrum in each telecom circle which may obviate any access issues.

The Commission assessed as to how Tata CMB is placed in terms of

closeness of competition to Airtel and its overall effectiveness as a competitor. In this regard, the Commission observed the market share trends and product portfolio of Tata CMB and diversion ratios and concluded that Tata CMB neither seems to be a close competitor of Airtel nor an effective competitor going forward.

The Commission observed that, post the proposed combination retail mobile telephony services market would have four private TSPs including Aircel, RJio, Vodafone-Idea and Airtel and one state owned TSP i.e., BSNL/MTNL in all overlapping telecom circles, which in the opinion of the Commission are in a position to exercise adequate competitive constraints on Airtel.

Considering the facts on record and the details provided in the notice, the Commission approved the combination under sub-section (1) of Section 31 of the Act.

For more details, please refer to CCI's Order at –

http://www.cci.gov.in/sites/default/files/Notice_order_document/C-2017-10-531_NC.pdf

INVESTIGATIONS INITIATED

Investigation Directed Against Star India Pvt. Ltd.

The Competition Commission of India (CCI) vide its order dated December 29, 2017 under Section 26(1) of the Competition Act, 2002 (the 'Act') directed investigation against Star India Pvt. Ltd. ('OP') in an information received from Thiruvananthapuram Entertainment Network (P) Ltd. ('Informant') alleging contravention of the provisions of the Act by the OP.

The Informant alleged that the OP entered into anti-competitive agreements with various T.V. channels distributors including the Informant and indulging the practice of price discrimination by asking the Informant to pay more for its Bouquet of channels which were being provided to various competitors of the Informant at lesser prices. The Informant also alleged abuse of dominant position by the OP in charging excessive

license fee from it as compared to the fee charged from its competitors.

With regard to the alleged anti-competitive agreements, the CCI was of the view that the alleged agreements were not entered into between parties engaged in identical or similar trade of goods or provision of services but are rather between the broadcaster and distributors; hence they would not fall within the scope of Section 3 (3) of the Act. Further, the alleged agreements also would not fall

within the scope of Section 3 (4) of the Act. Keeping in mind the factors such as language and consumer preferences, the CCI considers the relevant market in this matter as the 'market for provision of broadcasting services in the State of Kerala' and the OP is in a dominant position in the said market. The CCI observes that the alleged conduct of the OP in indulging the practice of price discrimination amongst Multiple System Operators (MSOs) as brought out in the information and

evasive reply to the CCI in this regard, prima facie indicate that the OP was acting in contravention of the provisions of the Section 4 of the Act.



Gurgaon Institutional Welfare Association v. HUDA

The Competition Commission of India (CCI) has ordered investigation against Haryana Urban Development Authority ('HUDA') for their alleged abusive practices in the development and sale of institutional plots in the State of Haryana. The Informant, an association of institutional plot allottees, alleged that HUDA has illegally restricted the right of the allottees to further sell, mortgage, transfer, lease out the plots purchased and buildings constructed by them and imposed additional liability on the allottees to pay undetermined consideration

amount towards additional cost of the plot in future.

The Commission *prima facie* found HUDA to be dominant in the relevant market of 'development and sale of institutional plots in the State of Haryana'. Further, upon perusal of allotments letters and conveyance deeds annexed with the information in the light of relevant regulatory framework and the provisions of the Competition Act, 2002 (the 'Act'), it was *prima facie* found that HUDA was imposing restriction on transfer of rights in respect of allotted institutional plots. Therefore, the

Commission was of the opinion that a *prima facie* case of abuse of dominant position within the meaning of Section 4(2)(a)(i) of the Act was made out against HUDA and accordingly, the matter was sent to the Director General ('DG') for investigation.



FORTHCOMING EVENTS

- Recognizing its growing stature in the world, International Competition Network (ICN) has decided that CCI would host the 2018 ICN Annual Conference during 21-23 March 2018 in New Delhi. ICN is an international body comprising 132 members from 120 competition jurisdictions aimed to build consensus and convergence towards sound competition policy principles across the global antitrust community. It serves to encourage the dissemination of antitrust experience and best practices, promote the advocacy role of antitrust agencies and seek to facilitate international cooperation. ICN Members produce work products through their involvement in flexible project-oriented and results-based working groups. Competition Commission of India (CCI) has been a member with since 2009 and has been actively participating in its activities. ICN Annual Conference is hosted by a member competition agency. This event is of great significance in the field of Competition Law & Policy. By virtue of this event, CCI has also been inducted as an ex-officio steering group member of the ICN for a period of 3 years. CCI eagerly looks forward to hosting this international event which will provide a rare opportunity to attract domestic and international competition enforcement experts to deliberate on international best practices and host of competition issues being faced by the Competition agencies the world over. The expected participation for the Annual Conference will be around 500 professionals including heads of competition agencies across the world, representatives and stakeholders such as the legal and economic professionals, international organisations such as WTO, UNCTAD and OECD etc. and academics. Each working group of ICN discusses its key work product for the year and deliberate on the relevant issues in Plenaries and Breakout Sessions during the annual conference.
- Mr. Devender Kumar Sikri, Chairperson, CCI shall deliver Keynote address at 19th Chapter of FICCI FRAMES on March 05, 2018 in Mumbai.
- Mr. Manoj Pandey, Adviser, CCI shall be the judge for Tamil Nadu National Law School (TTNLS) Moot Court Competition final round on February 04, 2018 at Tiruchirappalli.
- CCI-NLU Delhi Competition Law Moot 2018 shall be organised during February 16-18, 2018 at New Delhi.
- Mr Manish Mohan Govil, Adviser, CCI shall deliver lecture on Competition Law in the program organised by All India Glass Manufacturers' Association on February 24, 2018 at Agra.
- Six advocacy programs at various locations across India are proposed to be organized in collaboration with Indian Institute of Corporate Affairs (IICA) by March 2018.

ICN Annual Conferences

1. 2010- Istanbul, Turkey
2. 2011- The Hague, Netherland
3. 2012 - Rio de Janeiro, Brazil
4. 2013- Warsaw, Poland
5. 2014- Marrakech, Morocco
6. 2015- Sydney , Australia
7. 2016- Singapore
8. 2017- Porto, Portugal
9. 2018- New Delhi, India



ENGAGING WITH THE WORLD



Mr. Devender K. Sikri, Chairperson, CCI with officers of CCI and participants from other Competition Authority in OECD/KPC Competition Law Workshop at New Delhi, India

Chairperson/Members of the Competition Commission of India (CCI) participated in various international/ meetings/ conferences, some of which are as follows:

- I. OECD-Korea Policy Centre in collaboration with Competition Commission of India (CCI) organised workshop on Best Practices in Cartel Procedure during October 24-26, 2017 at the Lalit Hotel, New Delhi. The workshop was attended by delegates from competition authorities of Asia Pacific Region like China, Hong Kong, Vietnam, Indonesia, Malaysia, Philippines along with officers from CCI etc. The workshop focused on fighting cartels and in particular on fighting “Hard Core” cartels, which are anticompetitive agreements by competitors to fix prices, restricts output, submit collusive tenders, or divide or share markets. The objective of the workshop was to equip

competition authorities with the necessary know-how for detection and practical enforcement in fighting cartels, with an emphasis on evidence gathering and best practices on investigative steps that may be taken and building cases from scratch.

The opening sessions were addressed by Mr. Devender Kumar Sikri, Chairperson, CCI; Mr. Soohyun Yoon, Director General, OECD/KPC Competition Programme, and Mr. Ruben Maximiano, Senior Competition Expert, OECD. Mr. Yoon highlighted the importance of sharing of experiences by the expert, different approaches, techniques and tools in cartel investigations, Mr. Sikri, highlighted the importance of organizing such conferences, benefits from sharing of experiences of developed jurisdictions. Mr. Maximiano discussed about the adverse effects of cartels on both consumers & the economy in

general and evidentiary issues in establishing existence of cartels.

The other resource persons for the workshop were Ms. Santy Tobing, Head of Prevention Division Makassar, KPPU, Indonesia who delivered lecture on Indonesia's experience in cartels; Mr. Howard Parker, Trial Attorney, Department of Justice, USA spoke about building case-case strategy; Mr. Jhe-Hao, Yang, Chinese Taipei FTC; Mr. P.K.Singh, Adviser, CCI who also delivered lecture on India's experience in cartels; Ms. Vittoria Tesei, AGCM, Italy addressed the gathering on unannounced dawn raids/inspections. Ms. Erika Yu, Hong Kong Competition Commission and Ms. Yin-Jie, Deputy Director General, SAIC, China delivered lecture on cartel investigation in Hong Kong and China respectively.

II. CCI delegation consisting of Mr. Devender Kumar Sikri, Chairperson, Mr. Augustine Peter, Member, Ms. Smita Jhingran, Secretary and Mr. K.P. Anand, Deputy Director (Law) participated in 5th BRICS International Competition Conference during November 08-10, 2017 in Brasilia, Brazil. Apart from the CCI delegation, 3 Non-Governmental Advisors (NGAs) from India also participated in the conference. Mr. Devender Kumar Sikri, Chairperson also expounded on BRICS Second Decade of Cooperation – Way Forward during conference.



Mr. Devender K. Sikri, Chairperson, CCI; Mr. Augustine Peter, Member, CCI and Ms. Smita Jhingran, Secretary, CCI participating in the 5th BRICS International Competition Conference in Brasilia, Brazil

III. CCI delegation consisting of Mr. Devender Kumar Sikri, Chairperson, and Ms. Payal Malik, Adviser (Eco) participated in OECD Working Party Meeting and Global Forum during December 04-08, 2017 in Paris, France. The CCI delegation also attended the ICN Steering Group meeting on December 06, 2017 in Paris, France.



Mr. Devender K. Sikri, Chairperson, CCI and Ms. Payal Malik, Adviser, CCI participating in OECD Working Party Meeting and Global Forum in Paris, France.

CCI officials participated in various workshops/seminars/meetings, some of which are as follows:

IV. Shri Nitin Gupta, Director General and Shri Amit Tayal, Joint Director General participated in the 2017 ICN Cartel Workshop during October 06-08, 2017 in Ottawa, Ontario, Canada, Canada.

V. Shri Mukul Sharma, Deputy Director, CCI seconded at Competition Bureau, Canada

during October 16 –November 14, 2017 in Gatineau, Quebec, Canada.

VI. Shri Manoj Pandey, Adviser, CCI participated in Turkish Competition Authority's 20th Anniversary Competition Summit during October 31 to November 03, 2017 in Istanbul, Turkey.

VII. Shri Pranav Satyam, Deputy

Director, CCI participated in 21st International Workshop on Competition Policy organised by OEC-KPC during November 14-17, 2017 in Seoul, Korea.

VIII. Shri Anuj Verma, Deputy Director, CCI participated in 2017 ICN Merger during December 12-13, 2017 in Mexico City, Mexico.

ADVOCACY INITIATIVES

Advocacy Initiatives with Central Government, State Governments and PSUs

- i. Mr. S.L. Bunker, Member, CCI delivered lecture to trainee officers on competition law organised by National Academy of Defence Finance Management (NADFM) on December 04-05, 2017 at Pune. Mr. Vipul Puri, Deputy Director, CCI also made a presentation.



- ii. Ms. Smita Jhingran, Secretary, CCI gave presentation to IRS officers of 40th batch on “Competition Law: an Overview” at National Academy of Direct Taxes, Nagpur on October 13, 2017.
- iii. Mr. Manoj Pandey, Adviser, CCI took Session on “Competition Issues in Public Procurement” in the Advance MDP on Public Procurement at NIFM Faridabad on October 25, 2017.
- iv. Mr. Rakesh Bhanot, Adviser, CCI delivered lecture in workshop on public

procurement organised by Administrative Staff College of India (ASCI) in Bengaluru on November 13, 2017.

- v. Mr. Gaurav Kumar, Director, CCI interacted with participants in workshop on public procurement organised by World Bank on November 13, 2017 in Mumbai.
- vi. Mr. Manish Mohan Govil, Adviser, CCI delivered lecture in workshop on public procurement organised by ASCI on November 15, 2017 in New Delhi.
- vii. Shri Yogesh Kumar Dubey, Deputy Director, CCI delivered Lecture for RBI Grade B trained officers in RBI Staff College on October 4, 2017 in Chennai.
- viii. Mr. Sukesh Mishra, Director, CCI delivered lecture in workshop of public procurement organised by ASCI on November 16, 2017 in New Delhi.
- ix. Ms. Jyoti Jindgar, Adviser, CCI delivered lecture in workshop on Competition Law, Public Procurement, Bid-rigging and Competition Compliance organised by IMG, Kerala on November 20, 2017 in Thiruvanthapuram.
- x. Mr. Manish Mohan Govil, Adviser, CCI had a meeting with senior officers of the State Government in Hyderabad on

issues relating to competition law and public procurement on November 23, 2017 in Hyderabad.

- xi. Mr. Manish Mohan Govil, Adviser, CCI delivered lecture to Trainee officers at Dr. MCR HRD institute of Telangana on November 23, 2017 in Hyderabad.
- xii. Mr. Manish Mohan Govil, Adviser, CCI delivered lecture on the topic “Competition Issues in Public Procurement” organised by National Institute of Financial Management (NIFM) on December 04, 2017 at Faridabad.
- xiii. Mr. Manish Mohan Govil, Adviser, CCI had a meeting with Mr. Praveen Mehta, Adviser (PPP-infra), NITI Ayog on Competition Assessment of legislations on December 05, 2017 at New Delhi. Mr. Gaurav Kumar, Director, CCI also participated in the meeting.
- xiv. Shri Yogesh Kumar Dubey, Deputy Director, CCI delivered lecture on the topic “Role of CCI in Financial Sector” in Training programme organised by RBI Staff College on December 19, 2017 at Chennai.

Advocacy Initiatives with Trade Associations and Institutions

- i. Mr. D.K. Sikri, Chairperson, CCI and Mr. Manish Mohan Govil, Adviser, CCI took Interactive Session with the members of Confederation of Indian Industry (CII), Public Sector Enterprises (PSEs) Council on November 02, 17 at New Delhi.
- ii. Mr. S.L. Bunker, Member, CCI addressed Confederation of Indian Industries (CII) Western Regional Council meeting on December 15, 2017 at Ahmedabad.
- iii. Ms. Jyoti Jindgar, Adviser, CCI delivered Inaugural Special Address in the Conference on Mergers & Acquisitions organised by ASSOCHAM on October 27, 2017 at Bengaluru.

Competition Law Week

- iv. Mr. Manish Mohan Govil, Adviser, CCI took interactive sessions in the program organised by ICSI during Competition Law Week in Kolkata on October 30, 2017.
- v. Dr. Bidyadhar Majhi, Director, CCI delivered lecture on competition law during competition law week programs on Cartel Enforcement and other issues organised by Institute of Company Secretaries of India (ICSI) on November 01, 2017 at Bhubaneswar.
- vi. Mr. Nandan Kumar, Joint Director, CCI delivered lecture on competition law during competition law week programs on Cartel Enforcement and other issues



Mr. Devender K. Sikri, Chairperson, CCI having an interactive session with members of CII, Public Sector Enterprises (PSE) Council at New Delhi.



Ms. Jyoti Jindgar, Adviser, CCI with other participants at the Conference on Mergers & Acquisitions organized by ASSOCHAM at Bengaluru

- organised by ICSI on November 02, 2017 at Chandigarh.
- vii. Mr. Gaurav Kumar, Director, CCI and Mr. Yogesh Kumar Dubey, Dy. Director, CCI delivered lectures on competition law during competition law week programs on Cartel Enforcement and other issues organised by ICSI on November 02, 2017 at New Delhi.
- viii. Mr. Rakesh Bhanot, Adviser, CCI delivered lecture on competition law during competition law week programs on Cartel Enforcement and other issues organised by ICSI on November 04, 2017 at Bengaluru.
- ix. Mr. Anil, Dy. Director, CCI and Mr. Mohan Rao Ronanki, Dy. Director, CCI delivered lectures on competition law during competition law week programs on Cartel Enforcement and other issues organised by ICSI on November 03, 2017 at Coimbatore.

x. Mr. Pranav Satyam, Dy. Director, CCI delivered lecture on competition law during competition law week programs on Cartel

Enforcement and other issues organised by ICSI on November 04, 2017 at Pune.

programs on Cartel Enforcement and other issues organised by ICSI on November 17, 2017 in Ranchi.

xi. Mr Manoj Pandey, Adviser, CCI delivered lecture on



Select Interactive Sessions by the CCI Resource Persons during the ICSI Competition Law Week

xii. Mr. Nandan Kumar, Joint Director, CCI delivered lecture in seminar programs on Cartel Enforcement and other issues organised by ICMAI at Ahmedabad on November 11, 2017.

organised by ICMAI on November 19, 2017 in Madurai.

xv. Mr. Rajinder Kumar, Joint Director General, CCI delivered lecture in the Programme on Competition law and related issues organised by All India Rubber Manufacturer's Association on December 22, 2017 at New Delhi.

xiii. Mr. V. Sriraj, Dy. Director, CCI delivered lecture in South Region Convention, 2017

xiv. Mr. Anand Vikas Mishra, Dy. Director, CCI had an interactive session with members of All India Tyre Manufactures Association (ATMA) in New Delhi on November 28, 2017.

Advocacy Initiatives with Universities/Institutes

i. Mr. S.L. Bunker, Member, CCI judged the final round and Mr. Nandan Kumar, Joint Director, CCI judged the semi-final round of The West Bengal National University of Juridical Sciences (NUJS) National Competition Law Moot Court December 18, 2017 at Kolkata.



Mr. S.L. Bunker, Member, CCI giving prize to the winners of (NUJS) National Competition Law Moot Court at Kolkata

ii. Mr. S.L. Bunker, Member, CCI delivered inaugural address, Ms. Sibani Swain, Adviser, Ms. Sunaina Dutta, Dy Director, CCI delivered lectures in "the Seminar on Competition Law" in Faculty Development Program organised by UPES Dehradun on October 27, 2017.



Ms. Sibani Swain, Adviser, CCI delivering lecture at KIIT University at Bhubaneswar

iii. Ms. Sibani Swain, Adviser, CCI and Mr. V. Sriraj, Dy Director, CCI delivered lectures in Seminar titled "Competition Law in India: Problems and Prospects" organised by KIIT University on November 10, 2017 at Bhubaneswar.

Competition Law organised by Pondicherry University on December 20, 2017 at Pondicherry.

session on competition law on October 28, 2017 in the seminar on "Emerging Trends in Consumer Law" conducted by Smt. V D Siddhartha Law College, Vijayawada, Andhra Pradesh.

iv. Shri Rakesh Bhanot, Adviser, CCI delivered lecture on Awareness Workshop on

v. Shri Sukesh Mishra, Director(Law), CCI took a

Other Major Events

i. 19 students underwent internship during the period.

ii. An Induction Training Program for Indian Corporate Law Services (ICLS) Probationers (7th Batch) was facilitated by the Commission from October 10-13, 2017. In this context, Mr. V. Sriraj, Deputy Director, CCI and Mr. Sekhar, Joint Director, CCI were resource persons on October 10, 2017 and October 11, 2017 respectively at ICLS Academy Manesar. Probationers had interaction with CCI (Advocacy and CBD Divisions) and DG office on October 20, 2017 and October 13, 2017 respectively.

iii. CCI organised an Orientation Workshop on Competition Assessment for recently empanelled Institutes namely TN NLU, WB NUJS, Symbiosis Law School and Institute of Management, Nirma University on October 16, 2017 at CCI premises in HT House, New Delhi. Mr. Augustine Peter, Member, CCI addressed the participants in valedictory and was the Chief Guest. Ms. Sibani Swain, Adviser, Mr. Manish Mohan Govil, Adviser, Mr. Nandan Kumar, Joint Director and Mr. Yogesh Kumar Dubey, Dy. Director were resource persons from CCI.

DEVELOPMENTS IN OTHER JURISDICTIONS

1. Korea Fair Trade Commission (KFTC) Approved an Acquisition of DS Power Co. Ltd. by Esmeralda Co., Ltd. but with Behavioural Measures in Osan City

Esmeralda Co. Ltd. signed a deal to acquire 45.13 per cent of DS's Power Stock on April 14, 2017 and reported their merger and acquisition to the KFTC. The Commission conducted on-site investigation to examine whether the acquisition had any anti-competitive impact in the market or not. The Commission defined the commodity market as the market for 'waste heat supply' in which an affiliate of Esmeralda (Shindaehan oil refining industry) and affiliate of DS Power (DS I & II) are operating business and the 'CES market' in which DS Power is operating business; and defined local market as 'Osan City market'. The 'waste heat supply business' and 'CES business', which are in question in this merger case were supplying steam, heating and cooling heat through pipes in Osan City. Moreover there were no companies other than Shindaehan Oil Refining Industry and DSE&E in the waste heat supply market of Osan city. Therefore, KFTC defined market as the 'Osan City Local Market'.

On being analysed, the Commission observed that after the merger the merged entity's market share will be 100 % which will dominate the 'waste heat supply market in Osan'. As a result of this merger, all of the companies in the waste heat supply market in Osan will belong to a single enterprise group, and it is not easy for new companies to enter in to the market in the short term. As the merged company will dominate both the supply and demand markets of waste heat in Osan, there

is the possibility of arbitrary increase in the waste heat supply price. This merger makes it more difficult for new operators to enter into the waste heat supply market in Osan. Even if new entry is available, there is a possibility of unfair discrimination based on the terms of supply such as price and quantity.

In order to prevent them from raising steam prices, KFTC imposed behavioural measures such as unfair discrimination against new waste heat suppliers in terms of trading conditions such as (i) waste heat prices and contract quantity was prohibited, (ii) when charging for steam prices to the steam consumers, the suppliers were required to provide detailed information about the steam price calculation to them etc.

2. Competition Bureau, Canada Imposed Penalty on NGK for Rigging Bids for Car Parts

The Competition Bureau on December 13, 2017 observed that NGK Spark Plug Co. (NGK) which is a Japanese car parts manufacturer entered into illegal agreements with another supplier of spark plugs. The companies conspired together to determine who would win certain calls for bids issued by the General Motors Company in 2005. NGK also pleaded guilty for bid rigging as they participated in an international conspiracy; and hence, was fined \$550,000 by the Ontario Superior Court of Justice.

3. Competition and Market Authority (CMA), UK Fines Laundry Companies for Market Sharing

The Competition and Market Authority (CMA) on December 14, 2017 fined two NHS-contracted laundry companies £1.71m as they

divided the customers in a market sharing agreement. The CMA fined 2 suppliers of 'cleanroom' laundry services for breaking competition law by agreeing not to compete for each other's allocated territories and customers.

It follows enforcement action by the CMA against the companies known as Micronclean Limited and Berendsen Cleanroom Services Limited. Both businesses had been trading under the 'Micronclean' brand since the 1980s in a longstanding joint venture agreement. They supply specialist laundry services including the cleaning of garments worn by people working in 'cleanrooms'. These are highly sanitised environments used by businesses such as pharmaceutical and medical device manufacturers as well as NHS pharmacies.

In May 2012 the companies entered into new, reciprocal trademark licence arrangements under which they agreed not to compete against each other. Under the agreement, Micronclean Limited served customers in an area north of a line drawn broadly between London and Anglesey, and Berendsen Cleanroom Services Limited served customers located south of that line. The companies also agreed not to compete for certain other customers, irrespective of their location.

The authority was of the view that the market-sharing arrangements like these are generally illegal under competition law. For customers, these arrangements prevented them from shopping around to get a better deal and that can lead to higher prices, less choice and less innovation in the market as they divided the customers geographically and customer type. The authority further observed that market-sharing agreements are well

established and serious breaches of competition law and organisations like the NHS rely on the cleanroom laundry services provided by these companies, but we have found the 2 biggest players were dividing customers between them, leaving those customers with very little choice in service provider.

4. Uber to Face strict European Union (EU) Regulation after European Court of Justice(ECJ) Rules it to be a Transport Firm

The European Court of Justice (ECJ) has ruled, without the possibility of appeal, that Uber is a taxi company, not a software one. In other words, Uber is a transport services company requiring it to accept stricter regulation and licensing within the EU as a taxi operator.

The ruling ends a legal battle started in 2014 by a taxi drivers' association in Barcelona, called Association Professional Elite Taxi. It has accused Uber of unfair competition. Taxi companies that had to face Uber have been forced to adopt apps that made life easier for clients and, in many cases, to reconsider pricing policies. They contended that Uber Pop service used unlicensed drivers and wasn't authorized to carry passengers. In response to this allegation, Uber said that it was just an intermediary connecting drivers with passengers. The case moved up the European court hierarchy. Uber claimed that it is a computer services business and not a transport company so its operations should be subject to an EU directive governing e-commerce. The ECJ took the view that, since the Uber app is "indispensable for both the drivers and the persons who wish to make an urban journey" and since "Uber exercises decisive influence over the conditions under which the drivers provide their service," the company

provides a transport service, not an information one. European countries must regulate it as such, not as a software developer or an e-commerce operation.

5. Italian Competition Authority Fines Unilever for Abuse of its Position in Single-Wrapped Ice Creams

Italy's Antitrust Agency on December 06, 2017 fined Unilever's Italian unit more than 60 million euros (\$71 million) for abusing its dominant position in the country's ice cream market. It said Unilever had abused its position in single-wrapped so-called impulse ice creams, intended for immediate consumption, which it sells through its "Algida" brand.

Italian authorities started the probe in 2013 when a small producer of organic fruit lollies called La Bomba accused Unilever of forcing local retailers not to sell its popsicles. Unilever also pressured retailers into buying its least successful products alongside its more successful items and paid trade associations to monitor their member's adherence to the company's overall strategy. They further observed that Unilever's strategy was mostly imposed through loyalty rebates and exclusionary clauses in its contracts. For e.g. it said, the company frequently penalised customers that violate exclusivity clauses.

La Bomba, based in the seaside town of Rimini had contended that Unilever had struck deals with operators of beach resort, bars and campsites to exclusively sell the bigger firm's ice creams. Italians ate 5.15 billion euros-worth of ice cream in 2015, according to the antitrust agency, and sales of individually-wrapped treats were worth 780 million euros. The market for ice cream (to be consumed) outside the

home is a highly competitive one in which artisan and industrial, bulk and packaged products compete for the consumer's attention in a fragmented landscape that is like no other in Europe," Unilever said. Unilever further contended that selling the Magnum, Carte d'Or and Cornetto ice cream brands as well as other food, home and personal care goods, Unilever makes around 1.4 billion euros (\$1.65 billion) a year in Italy.

6. Federal Trade Commission (FTC), USA Approves Integra Life Sciences Holdings Corp.'s

Acquisition of Johnson & Johnson's Codman NeuroSubject to Behavioural Remedies in Markets for Five Types of Medical Devices

The Federal Trade Commission (FTC) on December 22, 2017 approved final order settling charges that Integra Life Sciences Holdings Corp.'s \$1 billion acquisition of Johnson & Johnson's Codman Neuro division would negatively impact competition in those markets. Both companies supply a range of devices used in operative neurosurgery, hydrocephalus management and neuro-critical care. In the U.S. markets for intracranial pressure monitoring systems, cerebrospinal fluid collection systems, non-antimicrobial external ventricular drainage catheters, and fixed pressure valve shunt systems and dural grafts.

Under the terms of the stipulated settlement with the FTC, the parties are required to divest the rights and assets to Integra's intracranial pressure monitoring systems and fixed pressure valve shunt systems, as well as Codman's cerebrospinal fluid collection systems, non-antimicrobial external ventricular drainage catheters, and dural grafts to Natus medical incorporated.

CAPACITY BUILDING EVENTS

Capacity Building Events during October - December 2017

1. Two (2) CCI officers participated as resource persons during Orientation Programme for newly recruited Indian Corporate Law Services (ICLS) Probationary Officers (7th batch) during October 10 and 11, 2017 at ICLS Academy, Indian Institute of Corporate Affairs (IICA), Manesar.
2. CCI organized an Attachment Programme for Indian Corporate Law Services (ICLS) Probationary Officers (7th batch) on October 12, 2017 at CCI & on October 13, 2017 at the Office of DG-CCI.
3. One (1) officer from CCI attended a session on 'Intellectual Property and its Interface with Competition Law' during Closed-room Workshop on 'Intellectual Property Rights and India's Innovation Landscape' organised by Centre for Intellectual Property (CIP) India in collaboration with Carnegie India at Claridges Hotel, New Delhi on November 02, 2017.
4. CCI organized its Annual Offsite Team-Bonding Workshop for thirty-three (33) Professional officers at Shimla during November 10-12, 2017.
5. CCI conducted 2-days In-house Induction Training Programme (2nd of 2017-18) on November 23-24, 2017 for twenty-two (22) newly recruited officers/ RAs of the Commission.
6. CCI organized its Annual Offsite Team-Bonding Workshop for thirty-three (33) Support officers at Shimla during December 01-03, 2017.
7. Two (2) officers from CCI attended the National Public Procurement Conclave organised by Confederation of Indian Industry (CII) in association with Government e-Market (GeM) at the India Habitat Center, New Delhi during December 11-12, 2017.
8. Ten (10) CCI officers attended 2-days Appreciation Course on "Parliamentary Processes and Procedures" organized by Bureau of Parliamentary Studies and Training (BPST) during December 13 - 14, 2017.
9. One (1) officer from CCI participated in Capacity Building programme on 'GFR, GeM, Noting & Drafting and Interpersonal Skill' organized for officers of Ministry of Corporate Affairs at Kochi during December 27-29, 2017.

HR CORNER

- Awards were distributed on October 24, 2017 by Smt. Smita Jhingran, Secretary, CCI to the winners of various competitions held during Hindi Pakhwara.
- A vacancy advertisement issued on 31.10.2017 to invite applications to fill up the vacant post of Jt. Director (F&A) in CCI on deputation basis.
- Three officers joined DG's Office/CCI on deputation basis.
- One officer was relieved from CCI on 14.11.2017 on completion of his deputation term.



Ms. Smita Jhingran, Secretary, CCI giving prizes to the officers of CCI

eNAM: A Potential Game Changer for Agriculture Markets

Agriculture in India faces many challenges like paucity of credit, lack of mechanisation, obsolete irrigation systems and most importantly poor access to markets by farmers leading to an exploitative intermediary driven agricultural markets. Moreover, because of information asymmetries markets are fragmented resulting in poor price discovery. As a part of the reform process, the government has launched National Agriculture Market portal (eNAM), to connect mandis electronically across states. The Government has stated that 455 markets in 13 states have been integrated with eNAM. The ultimate target is to connect 585 markets across the country by March 2018. As on 31st October 2017, 470 mandis across 14 states are live on e-NAM.

eNAM is a pan-India electronic trading portal which inter-connects the existing Agricultural Produce Marketing Committee's (APMC) mandis to create a unified national market for agricultural commodities. It provides a single window service for all information and services related to the APMCs. These include commodity arrivals and prices, buy and sell trade offers, provision to respond to trade offers etc. While material flow of agriculture produce would continue to happen through mandis, an online market like eNAM would lead to reduction in transaction costs and information asymmetry.



The platform is expected to empower farmers as they can access all information about demand and supply of the commodities and their real time prices. This will reduce rigidities in the market and will help immensely in the price discovery process. Price discovery allows for the determination of the price for a specific commodity by the forces of demand and supply in the market. Since, demand and supply are not readily observable on their own, there are huge search costs involved in collecting this information in the absence of a technological intermediation. Price discovery is a continuous process of arriving at a price from the information prevailing in the market and is a major economic function of the markets.

It is important to note that asymmetric information is one of the three ways in which markets can fail—the other ways being misuse of market power and externalities. Information can assist consumers and suppliers to make

rational choices. Thus, this decrease in the information asymmetry helps market become more efficient as they can cater to the needs of consumers and suppliers which would eventually result in enhancement of social welfare.

The eNAM portal has the potential to change the way farmers market their produce and will also help in curbing the exploitation of farmers. Information Communication Technologies (ICTs) such as the eNAM are increasingly been seen as a way to integrate, the hitherto excluded small farmers, into agricultural value chains. It is expected that ICTs as instruments of knowledge/information will alter the transaction costs by assisting the farmers in searching for a trading partner with whom to exchange or assist in searching for a market. It would also improve the farmer's ability to negotiate and bargain particularly when there is imperfect information regarding prices.

KNOW YOUR COMPETITION LAW

Procedure In Lesser Penalty Applications

The order under Section 26(1) of the Act is an administrative order. At the stage of forming a prima facie view, as required under Section 26(1), the Competition Commission of India (Commission) may not really record detailed reasons, but must express its mind in no uncertain terms that it is of the view that prima facie case exists, requiring issuance of direction for investigation to the Director General (DG). Such view should be recorded with reference to the information furnished to the Commission. Such opinion should be formed on the basis of the records, including the information furnished and reference made to the Commission under the various provisions of the Act.¹ Broadly the Commission proceeds under Section 26(1) of the Act and forms a prima facie opinion on the basis of the following:

- i. In view of Section 19(1) of the Act, when information or reference is received by the Commission or it is taken up suo moto.
- ii. In view of Regulation 2(i) of Lesser Penalty (LP) Regulation (LP Regulation), when vital disclosure is made by the Leniency Applicant and the case is taken up as a suo moto case u/s 19(1) of the Act.

When information or a reference is filed or it is taken up suo moto under Section 19(1) of the Act, the Commission in its usual course of

action can pass an order under Section 26(1). Herein since no data from vital disclosure has been used, there will be no concerns regarding the information disclosed in the order. When a case has been initiated under Section 19(1) of the Act, in such a case any person can come up with Leniency Application even in course of investigation proceedings. However in such cases there will be no requirement to pass a fresh 26(1) order since such an order has already been passed.

However in cases where vital disclosure is made by the Leniency Applicant in view of Regulation 2(i) of LP Regulation, Commission passes its prima facie order under Section 26(1) of the Act taking the case as a suo moto case u/s 19(1), in order to avoid revealing upfront that 26(1) order has been passed based upon Leniency Application. Regulation 2(i) of LP Regulation defines "vital disclosure" as full and final disclosure of information or evidence by the applicant to the Commission, which is sufficient to enable the Commission to form a prima facie opinion. When vital disclosure under LP Regulations is

received, Regulation 6 along with other LP Regulations becomes applicable. The information provided in the schedule read with Regulation 2(i) and Regulation 5(1) and 5(2) forms the basis for 26(1) order in a Leniency Case.

In both the above mentioned situations whenever an application is filed by a Leniency Applicant, Regulation 5 and other regulations of LP Regulations will apply. Leniency Applicant in both the situations will have to give information as specified in the Schedule provided under Lesser Penalty Regulations.

Under 2017 amendment in Regulation 6 of LP Regulations, the DG, if deems necessary, will disclose information, documents and evidence furnished by Leniency Applicant, with the consent of such applicant or in the absence of such consent, after recording reasons and with the prior written approval of the Commission. The name/ identity of the Leniency Applicant will be disclosed only in the final order. Right of inspection of records has also been given by introduction of Section 6A in LP Regulation.



1. Competition Commission of India v SAIL (2010) 10 SCC 744

JUDICIAL PRONOUNCEMENTS

1. Whether the Practice of Charging Different Rates for Reimbursement, Followed By DGHS, is Anti Competitive in Nature

Hon'ble NCLAT vide its order in TA(AT)(Compt.)No.04 of 2017; Wing Commander (Retired) vs. Director General of Health Services ("DGHS") upheld the order passed by the Commission and dismissed the appeal. The information in the present matter was filed by Wing Commander (Retd.) Dr. Biswanath Prasad Singh against DGHS, Managing Director of Ex-Servicemen Contributory Health Scheme ("ECHS"), Secretary General of Quality Council of India and 239 hospitals and Small Healthcare Hospitals accredited by National Accreditation Board for Hospitals and Healthcare Providers ("NABH"), alleging contravention of the provisions of Section 3 of the Act.

The grievance of the informant/appellant was with respect to the varied rates of reimbursement prescribed to the private hospitals, based on their accreditation or non-accreditation with NABH. As per the appellant this practice of levying varied rates of reimbursement was unfair and gave benefit to selected hospitals and thus, violated Section 3 of the Act. The grouse of the appellant pertained to the fact that the professional fee given to the Doctor by Respondent No.1/DGHS when he sat

in a hospital which was accredited and when he sat in another hospital which was not accredited to NABH, became different, thereby showing that even though the same doctor goes and does the same job at a super speciality hospital, his fee would become different and augmented by 15%.

The informant/appellant alleged that irrespective of the place from where any Doctor rendered professional advice, the fee should remain unchanged and any differential rate of payment for similar interchangeable professional advice will amount to violation of Section 3(3)(a) of the Act.

The Commission in its order observed that the DGHS rendered technical advice on all medical and public health matters and was involved in the implementation of various health services. The Commission found that NABH had been established with the objective of enhancing the health system and promoting continuous quality improvement and patient safety.

The Commission after considering the concerned Office Memorandum observed that the relevant geographic market in the matter would be 'Delhi-NCR Region' and in the same

geographic market with respect to market share, DGHS was a miniscule procurer of health services in Delhi-NCR region. The Commission further took note of the fact that accreditation of services is a global norm and is encouraged by various countries in the world to instil confidence amongst people and concluded by noting that different rates for reimbursement, followed by DGHS was based on the premise of compensating more for observing higher standards in healthcare segment and there was valid justification in the pricing policy and it cannot be said to be unfair or discriminatory.

The Commission thereby found no contravention of Section 4 of the Act by DGHS and no contravention of Section 3 of the Act was found against any other party.

The said order of the Commission is upheld by NCLAT. The NCLAT at the time of hearing of the appeal against the impugned order of the Commission specifically noted that the appellant was unable to point out any material, to show that the said impugned order was perverse in nature and needed to be interfered with.

2. Whether the Order of the Commission Finding No Dominance of the Alleged Contravening Entities in the Relevant Market of Provision of Container Terminal Services in JLN Port Mumbai is Correct

Hon'ble NCLAT vide its order in Competition Appeal (AT) No. 04 of 2017; Subodh Kumar Sharma vs CCI, upheld the order passed by the Commission observing it as a well-reasoned order. An information was filed before the Commission alleging that Gateway Terminals India Pvt. Ltd. is abusing its dominant position by limiting the services of Container Freight Stations (CFSs) at Jawahar Lal Nehru Port (JNP), thus denying market access to the CFSs which are not owned by it.

The Commission closed the case

under Section 26(2) of the Act. It was observed by the Commission that besides two CFSs being operated by Gateway Terminals India, there are 33 other players operating at JNP. Therefore case for abuse of dominance is not made out. Further, no case of contravention of any of the provisions of Section 3(4) of the Act can be made out in absence of any cogent evidence.

An appeal against the order of the Commission was filed before Hon'ble NCLAT, contending that the Commission has wrongly held that

there is no abuse of dominant position by Gateway Terminals India Pvt. Ltd. at JNP. It was also contended that the reasoning recorded by the Commission are perverse and therefore the order of the Commission is bad in law.

The Appeal was dismissed by Hon'ble NCLAT. NCLAT also imposed cost of Rs 1 Lakh, on the Appellant and ordered that the same needs to be divided and equally paid by the Appellant to Gateway Terminals India Private Ltd and Gujarat Pipavav Port Ltd.



CCI Officers during Offsite Team Building Exercise 2017-18

Competition Commission of India
The Hindustan Times House
18-20, Kasturba Gandhi Marg
New Delhi-110001

Please visit www.cci.gov.in for more information about the Commission.
For any query/comment/suggestion, please write to advocacy@cci.gov.in

Disclaimer : The contents of this publication do not necessarily reflect the official position of the Competition Commission of India. Contents of this newsletter are only informative in nature and not meant to substitute for professional advice. Information and views in the newsletter are fact based and incorporate necessary editing.