



The Quarterly Newsletter of Competition Commission of India (CCI)

Fair Play

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Inauguration of the International Competition Network (ICN) Annual Conference 2018, New Delhi by Shri P.P. Chaudhary, Hon'ble Union Minister of State for Corporate Affairs, Law and Justice. Also seen are Shri Andreas Mundt, ICN Steering Group Chair and Shri D.K. Sikri, Chairperson, CCI.

ICN Annual Conference 2018, New Delhi

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FROM THE DESK OF THE CHAIRPERSON



The Competition Commission of India (CCI) successfully hosted the 17th International Competition Network (ICN) Annual Conference from 21- 23 March 2018. More than 500 delegates from over 73 countries and 03 multilateral agencies gathered in New Delhi to participate in the Conference, which turned out to be a grand success. ICN is an informal but specialised platform for national and multinational competition agencies around the world to come together and exchange ideas and experiences on competition law, policy and practices.

ICN being a virtual network, Annual Conferences bring in an element of real interaction between competition agencies. It was a proud moment for the CCI to be the catalyst of such interaction this year. The three-day conference featured eight plenaries and twenty-four breakout sessions drawing engaging discussions. Important areas of discussion that generated an enthusiastic response among participants were *'perspectives from the bench: litigating competition cases'*, *'advocacy at the top at any time'* and *'vertical restraints in offline and online markets'*. What stood out distinctly during the three days of deliberations was the similarity of language in discussing issues related to implementation of competition law despite differences in geographies, business environments and legal framework.

From India's point of view, focus was on the 'Special Project on cartel enforcement and competition' which provided insight into the areas of rampant cartelization in India, use of tools for effective cartel investigation, and the need for focused advocacy in vulnerable areas. Around a quarter of the cartel cases dealt with by the CCI related to bid rigging in public procurement. Tender conditions/processes in certain instances were found to be limiting market participation in public procurement e.g. by way of having a list of pre-selected vendors which was not updated regularly, undue stringency in product specifications, information asymmetry, onerous participation cost etc. The CCI has recently developed a Diagnostic Tool: *'Towards Competitive Tenders'* to provide a standardized diagnostic method and implementation guide to make government tenders and procurement processes more competitive.

The last quarter of the year 2017-18 also witnessed certain path-breaking development in Indian competition jurisprudence. The judiciary has clarified some important interpretational issues such as: (a) whether denial of market access u/s 4(2)(c) of the Act can only be by one competitor against another and not by players operating in different levels of production chain; (b) whether the recall/review application can only be filed before or during the investigation by the DG and not after the submission of the report by the DG; and (c) whether an order u/s section 26 (1) of the Act can be challenged by disputing the reference made u/s 19(1)(b) of the Act?

During this quarter, Commission pronounced some important enforcement decisions. On the anti-competitive agreements front, penalties were imposed on enterprises engaged in aviation and coal liasoning sectors. In terms of abuse of dominant position, CCI found Google to have abused its dominant position in the market for 'online general web search services in India'. Ghaziabad Development Authority (GDA) was also found to have abused its dominant position in the market for *'provision of services for development and sale of low cost residential flats under affordable housing schemes for the economically weaker sections in the district of Ghaziabad'* by imposing unfair conditions on the allottees from economically weaker sections. In another case, CCI penalised Chemists and Druggists Association of Baroda and Federation of Gujarat State Chemists and Druggists Association and their office bearers for indulging in the anti-competitive practice of insisting NOC prior to the appointment of new stockists by pharmaceutical companies.

It is a pleasure to announce that this year's CCI's Annual Day Lecture will be delivered by the Comptroller Auditor General (CAG) of India. The CAG reports are often a rich source of information about prevalent anti-competitive practices in public procurement in various sectors. We look forward to having a symbiotic relationship with CAG in this regard.

(Devender K. Sikri)

IN FOCUS

International Competition Network (ICN) Annual Conference 2018

International Competition Network (ICN) was set up in 2001 with a view to share experiences and exchange views on competition issues deriving from an ever-increasing globalisation of the world economy. The ICN serves as a platform to encourage dissemination of antitrust experiences and best practices, promote the advocacy role of antitrust agencies, and facilitate international cooperation. Its members represent national and multinational competition agencies.

The ICN provides competition authorities with a specialized yet informal platform for maintaining regular contacts and addressing practical competition concerns. This allows for a dynamic dialogue that serves to build consensus and convergence towards sound competition policy and principles across the global antitrust community. This network is guided by an elected Steering Group of competition authorities. The Steering Group consists of fifteen elected members and three ex officio members, representing host of the last, current and next ICN Annual Conference.

ICN work takes place in project-oriented working groups, with members and nongovernmental advisors (NGAs) conducting discussions, typically via teleconference or e-mail, and by holding interactive workshops. Current ICN Working Groups are the following:

- (i) **Cartel Working Group (CWG):** The mandate of the

CWG is to address the challenges of anti-cartel enforcement, including the prevention, detection, investigation and punishment of cartel conduct.

- (ii) **Merger Working Group (MWG):** The mission of the MWG is to promote the adoption of best practices in the design and operation of merger review regimes in order to: (i) enhance the effectiveness of each jurisdiction's merger review mechanisms; (ii) facilitate procedural and substantive convergence; and (iii) reduce the public and private time and cost of multijurisdictional merger reviews.

- (iii) **Unilateral Conduct Working Group (UCWG):** The UCWG's primary objectives are to examine the challenges involved in analyzing unilateral conduct of dominant firms and firms with substantial market power, facilitate greater understanding of the issues involved in analyzing unilateral conduct, and to promote greater convergence and sound enforcement of laws governing unilateral conduct.

- (iv) **Advocacy Working Group (AWG):** The mission of the AWG is to undertake projects, develop practical tools and guidance, and facilitate experience-sharing among ICN member agencies, in order to improve the effectiveness of ICN members in advocating

the dissemination of competition principles and to promote the development of a competition culture.

- (v) **Agency Effectiveness Working Group (AEWG):** The mission of the AEWG is to identify key elements of a well-functioning competition agency and good practices for strategy and planning, operations, and enforcement tools and procedures. AEWG's mandate is to share experience among ICN members and NGAs and to develop and disseminate good practices for agency effectiveness.

The ICN so far has produced a series of practical recommendations and other tools on best practices, investigative techniques and analytical frameworks, which have significantly contributed to cooperation efforts among competition agencies. Notable achievements have been made in the areas of merger review, anti-cartel enforcement, unilateral conduct, competition advocacy, and competition policy implementation, through a variety of practical outputs. These include recommended practices, case-handling and enforcement manuals, reports, templates on legislation and rules in different jurisdictions, databases and toolkits, and workshops.

In addition to the work conducted by its permanent working groups, each year the competition agency hosting the annual ICN Conference leads a special project to explore a specific area of competition law. The

ICN Annual Conference is a unique opportunity for ICN members to network; interact on the substance of ICN's work; exchange ideas; and to approve ICN products.

Engagement with CCI:

Competition Commission of India (CCI/the Commission) has been a member of ICN since 2009 and has been actively participating in its activities. CCI was also co-chair of MWG from 2011-2014 and AEWG from 2015-17. Currently, CCI has been selected as project lead of the UCWG.

As a co-chair of MWG, CCI hosted ICN Merger Workshop in Delhi on December 1-2, 2014. This workshop was on the role of international cooperation in merger enforcement and deliberated on building an effective framework for international cooperation in the area of merger remedies as well as outreach initiatives for merger enforcement.

ICN Annual Conference, 2018

The ICN holds an Annual Conference which is hosted by a member competition agency. The Competition Commission of India hosted the 2018 ICN Annual Conference on 21-23 March 2018. The Conference was attended by around 525 professionals from over 70 countries. The participants included among others heads of Competition Agencies, representatives of international organisations, industrial stakeholders, economics and legal professionals and the academia. The three day Conference included eight Plenaries and twenty-four Breakout Sessions marked by extensive participation. There was one plenary session and

4-5 breakout sessions (BOS) pertaining to each ICN Working Group. In addition, there were one special project plenary session and few side sessions.

Inaugural session

The conference was inaugurated by the Honourable Union Minister of State for Law, Justice and Corporate Affairs, Shri P.P. Chaudhary. Opening speeches were given by Shri Chaudhary, CCI Chairman Shri Devender Kumar Sikri and ICN Chairman Shri Andreas Mundt. All three speakers emphasised the role of competition in the modern day economy, placing an emphasis on competition in the digital world. Fairness and effectiveness and the balance between due process and swift and effective enforcement are clear themes at this year's ICN. Salient points of the proceedings of the conference are given as below:

Special Project on 'Cartel Enforcement and Competition'

Plenary: CCI released a Special Project Report at the Conference on 'Cartel Enforcement and Competition'. The Report included a detailed study on cartel enforcement in India, advocacy to enhance awareness and take aways for young jurisdictions. The discussion on the 'Special Project Report' provided an insight into sectors prone to cartelisation, use of methods for effective cartel investigation, and the need for advocacy in vulnerable areas.

BOS: The two breakout sessions (BOS) on Special Project were 'Tender Design and Competition in Public Procurement' and 'Toolbox of an Efficient Cartel Hunter'. In the former, focus was on role of tender design

and procurement processes in constricting competition in public procurement and exploring ways to help procuring agencies design pro-competitive procurement systems. CCI's experience brought out issues in the design of tenders that were anti competitive such as - having a list of pre-selected vendors which was not updated regularly, undue stringency in specifications, information asymmetry, onerous participation cost etc. CCI has also developed a Diagnostic Tool: 'Towards Competitive Tenders' to provide a standardized diagnostic method and implementation guide to make government tenders and procurement processes more competitive. The focus of the second BOS session was on the competition authorities' arsenal of cartel detection tools and how it is being bolstered in keeping with the changes in business environment and technology. It was highlighted that the use of structural and behavioural screens do not preclude each other, rather they are complementary.

Advocacy Working Group (AWG)

Plenary: The AWG Plenary Session focused on effective advocacy being an all-weather tool for implementing and achieving the objectives of Competition Policy. Discussions were held on major challenges with respect to promotion of advocacy especially in a time of political churn and discontent with globalisation. It was emphasised that competition regulators need to possess a 'no fear or favor' attitude. The Panel also discussed about the distrust with Government authorities and the Competition authorities being on

the outer fringes of policymaking.

BOS: In the BOS on *'Effective Advocacy in the Digital World'* use of digital tools like online videos, video games, social media *etc.* in competition advocacy was emphasized upon. The session on *'Enhancing the impact of market studies'* featured discussions on strategies for designing market studies with the aim of increasing their impact towards target audience and importance of constant evaluation of impact. In another session titled *'Amplifying the voice of competition authorities towards key stakeholders'*, importance of recognizing government bodies as important stakeholders was brought out. It was also mentioned that the declining attention span of humans warrants short, sharp and simple advocacy content. In the session titled *'ICN-WBG Advocacy Contest: Lessons Learned from Awarded Stories'*, lessons from entries by different jurisdictions in the ICN AWG/World Bank Group Advocacy Contest were discussed. Entries were made in four themes viz. *'Prompting Structural Reforms in Key Sectors'* (Winner - , Kenya and UK CMA), *'Creating Markets for Private Sector'* (Winner - Brazil and FAS Russia), *'Reaping the Benefits of Globalization and Trade Openness'* (Winner - Argentina and Malawi) and *'Improving Administrative Procedures to Remove Obstacles to Competition'* (Winner - Chile).

Agency Effectiveness Working Group (AEWG)

Plenary: The AEWG Plenary session focused on the pros and cons of having specialized courts for handling competition cases, importance of interactions between

lawyers and economists in courts and relationship between competition agencies and courts. It emerged that competition issues are technical in nature; therefore, specialized courts could handle them in a better way as compared to general courts. Panellists observed that Competition Law is essentially an economic regulation and constant coordination and cooperation between economists and lawyers is indispensable, as they are the two important pillars for its effective enforcement.

BOS: The BOS on *'Integrating Economics in Case Assessment – Lessons Learnt from Experience'* saw deliberations on models deployed by economists, difficulties in integrating economics into assessments and pitfalls encountered in modeling or data analysis. The need for highly qualified economists in anti-trust bodies and articulation of complex models in a simple language was stressed upon. The session titled *'Due Process Strikes Back'* attracted mixed responses from critics and defenders of due process. While the former described due process as a threat to a competition agency as it may lead to destruction of evidence and delay in investigation, the latter justified it as a foundation for investigation as it strengthens the quality of output by ensuring certainty, fairness and predictability. In the BOS on *'The interaction of confidentiality and the rights of self-defense'*, the panelists discussed their experience in ensuring confidentiality, streamlining use of commercially sensitive information and the instances when it could be shared with the parties.

Merger Working Group (MWG)

Plenary: The MWG Plenary was focused on Vertical Mergers and Vertical Restraints. Vertical mergers usually do not raise competition concerns as these do not lead to a loss of direct competition, and instead are efficiency enhancing. However, due to the possibility of foreclosure because of such mergers, vertical mergers are no longer assessed with a presumption of legality but instead assessed on merits. The discussions in the plenary sessions and the BOS session were focused on (i) key aspects of vertical mergers; (ii) need for ability, incentive, effect framework (AIE framework) for assessment of vertical mergers; (iii) remedies in vertical mergers; and (iv) ICN Vertical Mergers Survey Report.

BOS: The session on *'What's New in Notification?'* featured discussion on deciding on the criteria for requiring notification of mergers and devising an efficient filing process. In both, the need for simplification was emphasized upon. Steps taken by jurisdiction such as EU, South Korea and India to simplify notification process were discussed. In the BOS titled *'Efficient and Effective Merger Investigative Process'*, sustained engagement between agency and the parties to the merger and the agency getting access to the "right" documents were identified as being at the core of an efficient and effective merger investigative process. The session on *'Merger Reviews in Digital Economy'* saw deliberations on the possibility of mergers in digital economy missing scrutiny by the competition agency in case of thresholds requiring notification not being dynamic. It

was recognized that local nexus, determination of value of moveable assets, valuation of services, and valuation of patents are the complex issues which need to be factored in determination of notifiability of mergers in digital markets.

Unilateral Conduct Working Group (UCWG)

Plenary: The panelists of UCWG Plenary discussed cases in their respective jurisdictions to underscore the changing forms of vertical restraints that have emerged in the online space pursuant to an upsurge in the technology. It emerged that the vertical restraints are not just limited to traditional forms like RPM but have become more wide-spread and sophisticated such as geo-blocking mechanisms, MFN clauses, advertising restrictions etc. The panel deliberated on the adequacy of the existing framework to deal with these newer forms of vertical restraints.

BOS: In the BOS titled *'Evaluation of Unilateral Conduct Decisions and Remedial Actions'*, it was unanimously agreed that a general remedy cannot be prescribed in all kinds of unilateral conduct as each unilateral conduct is unique and needs to be viewed in light of the particular geography, the peculiarity of the product, market size, years of contraventions etc. The session on *'Defining and assessing market power'* attracted discussion on the issue of assessment of market power and various indices used by competition authorities to ascertain the same. It was recognized that owing to the limitations associated with market shares, other factors such as ability to raise prices or reduce quality unilaterally, elasticity of demand,

elasticity of supply, entry barriers etc. are more suitable for assessing market power. It was also highlighted that market shares in digital markets are ephemeral and cannot alone be used as an indicator of market power and their analysis needs to take into account factors such as network effects, economies of scale, access to relevant data, competitive pressure from innovation, multi homing and switching costs. In the BOS titled *'Unilateral conduct in highly capital intensive industries'*, it was discussed that in industries such as Railways, Energy, Telecom sector etc., entry is not easy owing to high capital requirement and the competition authorities need to regulate the conduct of the erring entities, but such regulation should be optimal to allow fair functioning of the markets.

Cartel Working Group

Plenary: The CWG Plenary discussed about balance between the three pillars of effective enforcement of Competition Law, i.e., incentives of leniency, deterrence and compensation. The incentives for applying for leniency are avoiding of fines/punishment and the fear of detection of cartel. For the success of enforcement program of Competition Law and detection of a cartel, trained investigation team, prosecution team, etc. having abilities of wire-tapping of phones, extraction of data, etc. are important. Also, criminal enforcement is not the only method for cartel enforcement as many jurisdictions do not have provision for criminal enforcement in cartels.

BOS: The session on *'Liability of Parent Companies'* featured

discussions on different enforcement and legislative approaches and practices on the question of parent companies liabilities prevailing in different jurisdictions. In the BOS titled *'Promoting Competition through Effective Sanctions'*, representatives of Portugal, Japan and Slovakia highlighted the use of compliance programs, surcharge and criminal penalty and debarment from tendering process in their respective jurisdictions. In the BOS on *'Interplay between public and private enforcement'*, it was recognized that there is a need to balance private and public enforcement and that it is public enforcement which is the main duty of the authorities and in the process, the authorities may facilitate private enforcement.

Valedictory Session

Mr. Manoj Sinha, Hon'ble Union Minister of State for Telecommunications (I/C) and Railways delivered the valedictory address. He pointed out that despite differences in geographies, businesses and content of law, there is a common language of communication when it comes to implementation of competition law in every jurisdiction. He also mentioned that competition, being a catalyst for change, makes consumers informed and empowered. Fair and healthy competition in the long run benefits businesses as well as consumers and economy as a whole.

Mr. Juan Pablo Herrera, Chief of Economics, Colombia SIC presented two videos and invited the delegates from various jurisdictions to the next year ICN Annual Conference 2019 to be hosted by Columbia SIC.

SECTION 3 & 4 ORDERS

CCI imposed penalties upon Airlines for concerted action in fixing fuel surcharge (FSC) on cargo transport

CCI imposed penalties upon three Airlines for concerted action in fixing and revising FSC - a component of freight charges. The final order was passed by CCI on 08.03.2018 on an information filed by Express Industry Council of India against Jet Airways (India) Ltd., InterGlobe Aviation Limited, Spice Jet Limited, Air India Limited and Go Airlines (India) Limited alleging cartelisation.

The CCI noted in its order that the aforesaid Airlines acted in a concerted manner in fixing and revising the FSC rates and thereby contravened the provisions of Section 3 of the Act

which prohibits anti-competitive agreements including cartels. Accordingly, penalties of Rs. 39.81 crore, Rs. 9.45 crore and Rs. 5.10 crore were imposed upon Jet Airways (India) Ltd., InterGlobe Aviation Limited and Spice Jet Limited respectively. Besides, a cease and desist order was also issued against the Airlines.

While imposing penalties, the Commission applied the principle of relevant turnover and based the penalties on the revenue generated by the Airlines from air cargo transport services only. Considering the

financial position of Airlines at the relevant time and noting that FSC constitutes about 20-30 per cent of cargo revenue, penalty was imposed by the Commission @ 3 per cent of their average relevant turnover of the last three financial years. The CCI deprecated the Airlines for using FSC as a pricing tool which was essentially introduced to mitigate the fuel price volatility.

The final order was passed by CCI pursuant to the directions issued by the erstwhile Competition Appellate Tribunal remanding the matter back while setting aside the original order of CCI.

CCI issues order against Nair Coal Services Pvt. Ltd., Karam Chand Thapar & Bros (CS) Ltd. and Naresh Kumar & Co. Pvt. Ltd. for rigging bids and dividing market by forming hard core cartel in respect of tenders floated by MAHAGENCO for procuring coal liasoning services

The CCI found Nair Coal Services Pvt. Ltd., Karam Chand Thapar & Bros (CS) Ltd. and Naresh Kumar & Co. Pvt. Ltd. to be in contravention of the provisions of Section 3(1) read with Section 3(3)(c) and Section 3(3)(d) of the Act for acting in a collusive and concerted manner which eliminated and lessened the competition besides manipulating the bidding process in respect of the tenders floated by Maharashtra State Power Generation Co. Ltd. (MAHAGENCO) for award of contract of coal liasoning work for its various thermal power stations.

Taking a serious view of the collusive

conduct of coal liasoning agents, CCI opined that the case fell in the category of hard core cartels as the parties reached an agreement to submit collusive tenders and to divide the markets which warranted the matter to be dealt with utmost severity. Accordingly, CCI invoked the stringent provision of the law which enables it to impose a higher penalty in case of agreements entered into by cartels. Hence, a penalty at the rate of 2 times of the total profits earned from provision of coal liasoning services to all power generators for continuance of the cartel for 2010-11 to 2012-13 years was imposed upon the parties. Resultantly, CCI imposed a penalty of

Rs. 7.16 crore, Rs. 111.60 crore and Rs. 16.92 crore upon NCSL, KCT and NKC for the anti-competitive conduct. Besides, a cease and desist order was also issued against the above companies.

CCI also deprecated the conduct of the Informant in breaching the confidentiality and sanctity of the inquiry by circulating copies of the investigation report to B.S.N Joshi & Sons Ltd.- a rival of the Opposite Parties - who, in turn, forwarded copies thereof to various authorities.

The order was passed on 10.01.2018 in Case No. 61 of 2013.

CCI imposes penalty on Ghaziabad Development Authority (GDA) for Abuse of its Dominant Position

In case no. 86 of 2016, the CCI found GDA to be in contravention of the provisions of Section 4(1) read with Section 4(2)(a)(i) of the Competition Act, 2002 (the Act) for abuse of its

dominant position by imposing unfair condition on the allottees from economically weaker sections in its Pratap Vihar Residential Housing Scheme. The final order was passed by

CCI on February 28, 2018 on an information filed by Sh. Satyendra Singh against GDA alleging abuse of dominance.

CCI held that conduct of GDA in raising the price of EWS flats from the initial price of Rs. 2,00,000/- in 2008 to Rs. 7,00,000/- in 2015 under the said scheme without any enabling provision either in the Brochure of the Scheme or allotment letter is arbitrary and unilateral. Further, the condition

for levying penal interest @ 10.5 per cent per annum in case of delay in the payment of the quarterly instalments by the allottees without a corresponding provision for GDA in case delay of in giving possession of the flats is abusive, being one sided and unfair. Therefore, CCI held that

such conduct of GDA is in violation of Section 4(2)(a)(i) of the Act. CCI has imposed a penalty of Rs. 1,00,60,794/- (Rupees one crore sixty thousand seven hundred ninety four only) on GDA for the said anti-competitive conduct. Besides, a cease and desist order was also issued against GDA.

CCI issues order against Google for search bias, imposes penalty

CCI found Google to have abused its dominant position in the online general web search services in India. The CCI in its order noted that the allegations against Google in respect of search results essentially centred around design of Search Engine Result Page (SERP). Exhibiting a self-imposed regulatory forbearance from scrutinizing product designs in ascertaining anti-trust violations, CCI noted in its order that product design is an important and integral dimension of competition, undue intervention in designs of SERP can affect legitimate product improvements. CCI further observed in its order that Google, being the gateway to the internet for a vast majority of internet users due to its dominance in the online web search market, is under an obligation to discharge its special responsibility.

In this backdrop, CCI found prominent display of Commercial Flight Unit by Google on SERP with link to Google's specialised search options/ services (Flight) in contravention of the provisions of Section 4(2)(a)(i) of the Act. CCI noted in its order that Google through its search design has not only placed its commercial flight unit at a prominent position on SERP, it has also allocated

disproportionate real estate thereof to such units to the disadvantage of verticals trying to gain market access. Besides, it was also found that Google has provided a further link in such commercial units which leads users to its specialised search result page (Google Flight) resulting into unfair imposition upon the users of general search services as well.

The CCI also noted in the order that ranking of Universal Results prior to 2010 were pre-determined to trigger at the 1st, 4th or 10th position on the SERP instead of by their relevance. Such practice of Google was unfair to the users and was found to be in contravention of the provisions of Section 4(2)(a)(i) of the Act. However, CCI noted in its order that since October, 2010, Google has made display of such results on free floating basis. Accordingly, taking Google's submission on record, CCI refrained from issuing any cease order and only directed Google to desist from such a practice in future.

Further, prohibitions imposed under the negotiated search intermediation agreements upon the publishers were held to be unfair as they restricted the choice of these partners and prevented them from using the search services

provided by competing search engines. Imposition of unfair conditions on such publishers by Google was held to be in contravention of the provisions of Section 4(2)(a)(i) of the Act. The CCI also observed in its order that Google was leveraging its dominance in the market for online general web search, to strengthen its position in the market for online syndicate search services. The competitors were denied access to the online search syndication services market due to such a conduct.

However, CCI did not find any contravention in respect of Google's specialised search design (OneBoxes), AdWords, online intermediation and distribution agreements.

The case was filed by Matrimony.com Limited and Consumer Unity & Trust Society (CUTS) in 2012.

Based on findings of contraventions against Google, CCI imposed a penalty of Rs.135.86 crore upon Google after taking into account its revenue from its India operations only. The final order (published on 08.02.2018) was passed by a majority of 4-2 with two Members issuing a Dissenting Note in Case Nos. 07 & 30 of 2012.

CCI penalises Chemists and Druggists Association of Baroda ('CDAB') and Federation of Gujarat State Chemists and Druggists Association ('Gujarat Federation') and their office bearers for contravention of the provisions of the Act

CCI has found the CDAB and Gujarat Federation to be in contravention of the provisions of the Act. One of the stockists based in Vadodara filed an information alleging that despite an earlier order of the Commission in the

year 2012, CDAB, through its practices, has continued to limit and control the supply of drugs and medicines in the market by mandating 'No Objection Certificate' ('NOC'/ 'LOC') prior to

appointment of stockists and payment of 'Product Information Service' ('PIS') charges prior to introduction of new products in the market by pharmaceutical companies.

Investigation carried out by the Director General ('DG') revealed involvement of the State level association, i.e. the Gujarat Federation, besides CDAB, in the alleged conduct. After detailed enquiry, the Commission has found that CDAB and the Gujarat Federation were indulging in the anti-competitive practice of insisting NOC prior to the appointment of new stockists by pharmaceutical companies. Further, the Gujarat Federation was found to be carrying on the practice of making introduction of new products in the

market subject to payment of PIS charge and its approval. These practices were held to be limiting and controlling supplies of drugs/medicines in the market, in contravention of Section 3(3)(b) read with Section 3(1) of the Act. Further, the Commission has held office bearers of CDAB and Gujarat Federation, namely Shri V.T. Shah (President, CDAB), Shri Jashvant Patel (President, Gujarat Federation), to be responsible under Section 48 of the Act, for their involvement in the anti-competitive practices.

Accordingly, CDAB, Gujarat Federation and their office bearers, have been directed to cease and desist from indulging in the aforesaid anti-competitive practice and a monetary penalty of Rs. 1,08,588/- and Rs. 11,11,549/-, calculated at the rate of 10 per cent of the average income of CDAB and the Gujarat Federation, respectively, under the provisions of Section 27 of the Act. Penalties of Rs. 34,048/- and Rs. 62,144/-, calculated at the rate of 10 per cent of their respective average incomes, are also imposed upon Shri V.T. Shah and Shri Jashvant Patel.

INVESTIGATION INITIATED

CCI directs investigation against Gujarat Energy Transmission Corporation Limited, State Load Dispatch Centre, GETCO and Paschim Gujarat Vij Company Limited for alleged abuse of dominant position

CCI *vide* its order dated January 31, 2018, has directed investigation against Gujarat Energy Transmission Corporation Limited (OP-1), State Load Dispatch Centre, GETCO (OP-2) and Paschim Gujarat Vij Company Limited (OP-3) (collectively referred to as the 'Opposite Parties) in an information received from HMPL for alleged abuse of dominant position by the Opposite Parties, specifically the State Load Dispatch Centre, GETCO.

The Informant (HMPL), an industrial consumer of electricity, is currently supplied the electricity by OP-3, the distribution licensee in the area where the Informant is located. The Informant, being desirous of taking electricity through an alternative supplier (open access), sought permission of OP-2, on 12 different occasions between September, 2014 to September, 2016, but the same was incessantly denied on the ground of 'upstream network/system constraint'.

The Informant has alleged that such denial by OP-2 was done with an intention to protect the demand for its group company *i.e.* OP-3 and is

arbitrary, unfair and abusive, thereby contravening the provisions of Section 4 of the Act.

The Commission, after hearing the parties, *prima facie* found merit in the allegations made by the Informant. The Commission delineated the relevant market as the market for '*services relating to use of transmission facility for availing open access electricity*'. The Commission was *prima facie* of the view that OP-2 holds a dominant position in the relevant market owing to the statutory provisions and powers accorded to it under the Electricity Act, 2003 read with GERC Regulations.

With regard to abuse, the Commission was of the view that by denying open access permission, to the Informant and possibly to other consumers, OP-2 appears to have curtailed or discouraged the demand for open access electricity. The Commission observed that the Open Access is considered as one of the most progressive provision for meeting the objectives enshrined under the Electricity Act, 2003, which seems to have not been adopted with

the right spirit. Thus, *prima facie* OP-2 was found to have limited and restricted production of electricity and the provision of supply of open access electricity in contravention of the provisions of Section 4(2)(b)(i) of the Act. Further, the Commission held that denial of open access permission to the Informant has resulted in a violation of Section 4(2)(c) of the Act, and also a consequent violation of Section 4(2)(e). The Commission found that *prima facie* OP-2 has leveraged its dominant position in the relevant market to adversely affect the competition in the downstream market, where it is present through its group entity OP-3. The Commission noted that the structural linkages between the OPs in the present case points toward the conflict of interest, given which the anti-competitive motive behind such denial by OP-2 cannot be ruled out and may need to be tested in detailed investigation.

Accordingly, the Commission directed the Director General to investigate the matter under Section 26(1) of the Act.

ICN Annual Conference 2018 in Pictures

Plenary Sessions



Shri A.K. Sikri, Hon'ble Justice, Supreme Court of India participating in the Agency Effectiveness Working Group Plenary on 'Perspectives from the Bench : Litigating the Competition Cases'



Shri Devender K. Sikri, Chairperson, CCI participating in the 'Plenary on Special Project on Cartel Enforcement and Competition'



Shri Sudhir Mital, Member, CCI participating in the Advocacy Working Group Plenary on 'Advocacy for good time, bad time or any time'



Shri Augustine Peter, Member, CCI participating in the Unilateral Conduct Working Group Plenary on 'Online Markets and Vertical Restraints'

Select Pictures of Breakout Sessions (BOS) and others



Valedictory Session



Shri Manoj Sinha, Hon'ble Union Minister of State for Telecommunications (I/C) and Railways; Shri Devender Kumar Sikri, Chairperson, CCI; Shri Andreas Mundt, Chairperson, ICN Steering Group and Shri Juan Pablo Herrera, Chief of Economics, Colombia SIC

Cultural, Social and Other Activities



ICN Annual Conference 2018 in Pictures

Plenary Sessions



Cartel Working Group Plenary on 'Incentives, Deterrence and Compensation'



Plenary Session on 'Implementation in ICN'



Panel of the Merger Working Group Plenary on 'Vertical Mergers'



Shri G.P. Mittal, Shri Sudhir Mital, Shri Augustine Peter and Shri U.C. Nahta, Members CCI and other delegates

SECTION 5 & 6 ORDERS

Acquisition of Brahmani River Pellets Limited by (a) Thriveni Pellets Private Limited ("TPPL"); (b) JSW Techno Projects Management Limited ("JTPML"); and (c) Mitsun Steels Private Limited ("MSPL")

The Commission received a notice jointly given by (a) TPPL; (b) JTPML; and (c) MSPL on December 26, 2017. The combination relates to acquisition by TPPL, JTPML, and MSPL of 100 per cent equity shares of Brahmani River Pellets Limited ("BRPL") from its holding company i.e. Aryan Mining and Trading Corpn. Private Limited ("AMTC") in the following manner: (i) TPPL and JTPML, each to acquire 49 per cent of BRPL's shares along with right to nominate director(s) on the board of BRPL and; (ii) MSPL to acquire 2 per cent of BRPL's shares.

TPPL is a subsidiary of Thriveni Earthmovers Private Limited ("TEML"), which is *inter alia*, engaged in the business of providing

mining services. JTPML, owned by Sajjan Jindal family trust, is a part of the JSW Group, and is, *inter alia*, engaged in project management consultancy services, strategic investments and manufacture of industrial gases. MSPL is a distributor and dealer of various steel and structural products. BRPL, a wholly owned subsidiary of AMTC, is *inter alia* engaged in the business of producing and selling iron ore pellets and exports majority of its production of such pellets.

The Commission observed that TPPL, JTPML, MSPL and BRPL are not engaged in production, distribution or trading of similar or identical or substitutable products or services, and JSW's Group entities namely (i) JSW

Steel Limited ("JSW Steel") and (ii) Amba River Coke Limited ("ARCL") produce iron ore pellets. However, iron ore pellets produced by JSW's group entities are used for captive consumption only. The Commission further observed that there could be a potential for vertical relationship between BRPL and JTPML, wherein JTPML may supply BRPL's iron ore pellets to JSW Steel.

The Commission was of the opinion that the market share of BRPL is unlikely to raise any competition concern in the segment of iron ore pellets in India. Accordingly, the Commission approved the combination under sub-section (1) of Section 31 of the Act.

Acquisition of Principal Mutual Fund by Principal International India Limited

The Commission received a notice filed by Principal International India Limited ("Principal"/ "Acquirer") on January 02, 2018. The combination relates to acquisition by Principal of 21.38 percent and 30 percent of the equity share capital of Principal Pnb Asset Management Company Private Limited ("Target AMC") and Principal Trustee Company Private Limited ("Target Trustee"), respectively from Punjab National Bank ("PNB").

Principal is a wholly owned subsidiary of Principal Financial Services Asia Limited, which is a subsidiary of Principal Financial Services Inc., USA ("PFSI"), an entity belonging to Principal Financial

Group of United States of America ("Principal Financial Group"). Principal Financial Group is the sponsor of the Principal Mutual Fund ("Target MF").

Target AMC, an asset management company of Target MF, is a joint venture between Principal Financial Group (Mauritius) Limited ("PFGM") and PNB, with equity stake of 78.62 percent and 21.28 percent, respectively. It is registered with the Securities and Exchange Board of India. Target Trustee is also a joint venture between PFGM and PNB with equity stake of 70 percent and 30 percent, respectively, and provides trustee services to the Target MF.

The Commission observed that Target AMC and Target Trustee are under the joint control of Principal Financial Group and PNB. Post the proposed combination, the ownership and control of Target AMC, Target Trustee Company and Target MF would be under the sole control of Principal Financial Group, through its group companies. The Commission also observed that there will not be any change in market dynamics as a result of proposed combination.

Accordingly, the Commission approved the combination under sub-section (1) of Section 31 of the Act.

JUDICIAL PRONOUNCEMENTS

1. Whether Denial of Market Access U/S 4(2)(C) of the Act can only be by One Competitor Against Another ?

Hon'ble Supreme Court vide its judgement in Civil Appeal No. 7215 of 2014; CCI v. Fast Way Transmission Pvt. Ltd. and Others upheld the order passed by the Commission and dismissed the appeal.

The information in the present matter was filed by M/s Kansan News Private Limited ("Informant"), who was the broadcaster of a news and current affairs TV channel in the States of Punjab, Haryana, Himachal Pradesh and Union Territory of Chandigarh. It was alleged that Multi System Operators ("MSOs") namely Fast Way Transmission Pvt. Ltd., Hathway Sukhamrit Cable & Datacom Pvt. Ltd. and Creative Cable Network Pvt. Ltd. (together OPs/ Respondents), who carried the aforesaid channel to persons who watch Cable T.V., have contravened the provisions of Section 3 & 4 of the Act.

In its information it was informed that a channel placement agreement was entered into on August 01, 2010, between the informant and the MSOs all of which were stated to belong to the Fast Way Group. By notices of termination dated January 19, 2011, the aforesaid agreements were terminated by merely giving a 30 day notice. Thus, the informant was before CCI being aggrieved by the aforesaid termination.

The Commission in its final order dated July 03, 2012 held that Fast Way Group was found abusing its dominance in the cable TV service in the territory of Punjab and

Chandigarh. The Commission held that the Fast Way Group is having more than 85 per cent of the total subscribers in Punjab and Chandigarh and due to this fact not only every broadcaster including the informant is dependent upon their network, the consumers of cable TV in Punjab and Chandigarh also have huge dependency on the Fast Way Group. Abusing its market power the Fast Way Group had denied the Informant the opportunity for transmission of its channel on its network and thereby has effectively denied market access. Informant has been denied and effectively wiped out from the relevant market by the conduct of the Fast Way which violated the provisions of S. 4(2)(c) of the Act. Thereafter, the CCI imposed a penalty of Rs. 8,40,01,141/- upon them. However, the CCI held that no case of the violation of Section 3 of the Act was made out.

The said order of the Commission was set aside by the erstwhile COMPAT. The COMPAT held that the denial of market access under Section 4(2)(c) can only be by one competitor against another, and a broadcaster ("Informant") cannot be said to compete with MSOs. No case of violation of either Section 3 or Section 4 of the Act was made out by COMPAT and the order of the CCI was set aside.

An appeal against the said order dated 02.05.2014 of the COMPAT was preferred by the Commission before Hon'ble Supreme Court. The Apex Court vide its judgement dated

January 24, 2018 upheld the order of the Commission and held that Fast Way Group had 85 per cent of subscribers share in cable TV market in State of Punjab and Chandigarh, hence, the dominant position of Fast Way Group was clearly made out. With regard to the abuse of its dominant position it was held that the same was also established as the informant was denied access by the Fast Way Group by terminating the agreement midstream without stating any reasons. The words "*in any manner*" in S. 4 of the Act are words of wide importance and must be given their natural meaning. Once a dominant position is made out on facts, whether a broadcaster is in competition with MSOs is a factor that is irrelevant for the purpose of application of Section 4(2)(c) which in present case becomes applicable because the broadcaster is denied market access due to an unlawful termination of the agreement. However, the Supreme Court differed in opinion with the Commission on the point of imposition of penalty. It was held that no penalty ought to have been imposed on the facts of the present case as the finding of the CCI that the TRP rating of the broadcaster was not so low as it was almost equal to that of other channels, is not correct. TRP given to the news channel 'Day and Night' is much lower than that given to any other channel and this was the reason for terminating the agreement with the broadcaster in mid-stream.

2. Whether the Recall / Review Application can only be filed before or during the Investigation by the DG and Not After the Submission of the Report by the DG

Hon'ble Delhi High Court *vide* its order in W. P. (C) 2106 of 2018; Cadila Healthcare Limited and Anr. vs. CCI and Ors. upheld the order passed by the Commission and dismissed the writ petition filed therein. The

information in the present matter was filed by Reliance Medical Agency (Reliance) before the Commission against the Chemist & Druggist Association, Baroda and certain pharmaceutical companies

alleging contravention of the provisions of the Act by limiting and controlling the supply of drugs in Vadodara by requiring 'No Objection Certificate' for the appointment of stockists.

The Commission opined that there existed a *prima facie* case of contravention and accordingly, passed 26(1) order directing DG to investigate the role of certain pharmaceutical companies for the alleged contravention. Notice was issued to the petitioner (Cadila) with a direction to furnish certain information. The grievance of the Cadila was that it was only after the DG report was filed, it came to know about the said matter.

Cadila filed a review/recall application seeking review/recall of Section 26(1) order on the ground that it was not made a party to the case initially and also filed an application for the cross examination. *Vide* orders dated January 16 and 17, 2018, the Commission rejected both the review/recall application of 26 (1) order and the application seeking cross examination.

Aggrieved by the same, a writ petition was filed by Cadila

challenging the *prima facie* order of Commission u/s 26 (1) and other orders whereby the CCI rejected applications seeking review/recall of Section 26(1) order and cross-examination of the parties.

The Court observed that the recall/review application can only be filed before/during the investigation by the DG and not after the submission of investigation report. Once the investigation report is submitted, then an action/procedure u/s 26(5) or 26(8) of the Act gets activated, taking the case out of the realm of Section 26(1) or 26(2) of the Act. The only remedy available to the parties is to argue the investigation report before the Commission and not on the order u/s 26(1). Further, it was held that even if the Commission has not formed a *prima facie* opinion against the petitioners in the 26(1) order, DG would still be within his power to investigate, if investigation reveals facts contrary to any

person/enterprise. Further, the Court with regard to the denial of the opportunity of cross-examination accepted the reasoning of the CCI that the persons whose cross examination was sought for, their affidavits were not even relied upon by the DG and that there were other factors available to reach to the conclusion.

The impugned order of the Commission was upheld. The Court at the time of hearing of the petition against the impugned order of the Commission specifically noted that the Commission in the impugned order had clearly left open the questions on merits and had observed that the petitioners shall be at liberty to argue on merits before it while rebutting the evidence collected by the DG during investigation. The Court held that the writ petition is dismissed as the impugned orders need no interference.

3. Whether an Order Under Section 26 (1) of the Act Can Be Challenged by Disputing Reference Made U/S 19 (1) (B) of the Act?

Hon'ble Madras High Court *vide* its order in W. P. 35255 of 2015; M/s. MRF Ltd. vs. Ministry of Corporate Affairs (MCA) and Ors., dismissed the writ petition filed.

A representation was sent to MCA by All India Tyre Dealers' Federation (Federation) alleging that although prices of natural rubber had gone down, the tyre manufacturers have increased the prices and therefore, there was a cartel. Said representation of alleged cartelization was forwarded by the MCA to the Commission on December 16, 2013.

The Commission passed a *prima facie* order u/s 26 (1) on June 24, 2015. Further, a notice was sent by the Addl. DG to the MRF Ltd. asking it to furnish certain information. Being aggrieved by the *prima facie* order,

MRF moved to Madras High Court through this writ petition.

The Court observed that the petitioner is entitled to maintain the present writ petition before this Court and consequently, the power of this Court to exercise its jurisdiction under Article 226 of the Constitution of India is not ousted in any way since a statutory appellate remedy is not provided against the impugned order. This court, discussing the nature of 26(1) order, observed that 26 (1) order is only to direct DG to cause an investigation into the matter and such direction is issued after formation of an opinion by Commission that there exists a *prima facie* case. The same is not to be construed as binding on the Commission while passing the final order u/s 27 and also nothing stated

in the 26 (1) order shall tantamount to final expression on merit. The order passed u/s 26(1) itself does not give rise to a cause of action to subject the same to judicial interference.

The Court while rejecting the claim of principles of natural justice made by the petitioner, held that at this stage, the parties cannot seek for compliance of the same as the direction for investigation itself is not a finding rendered against the parties, more particularly, when a *prima facie* view/opinion need not necessarily to be affirmed in the final order, as it depends upon the outcome of the investigation and further consideration of the Commission, based on the report of the DG.

It was observed that when the very

order passed u/s 26 (1) is not appealable and the merits of the said order also cannot be questioned before this Court under Article 226, since it is administrative in nature, not deciding the rights of the parties in any manner and is only in the form of preparatory, that too, at the preliminary stage, the petitioner is not entitled to question the said order by disputing or questioning the very reference made u/s 19(1)(b). It is to be noted that both the reference and information merge with the direction issued u/s 26(1) and therefore, such reference, even assuming to be a defective one, cannot be segregated independently from the order passed u/s 26(1) and can be decided about its validity.

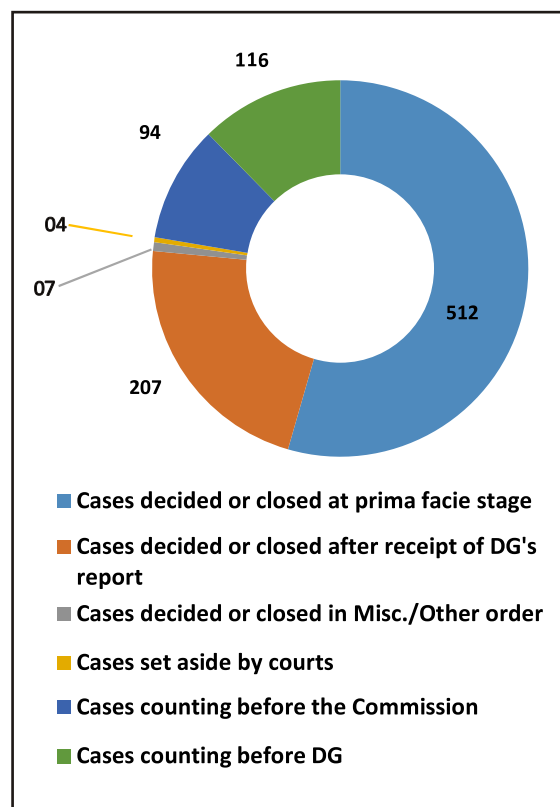
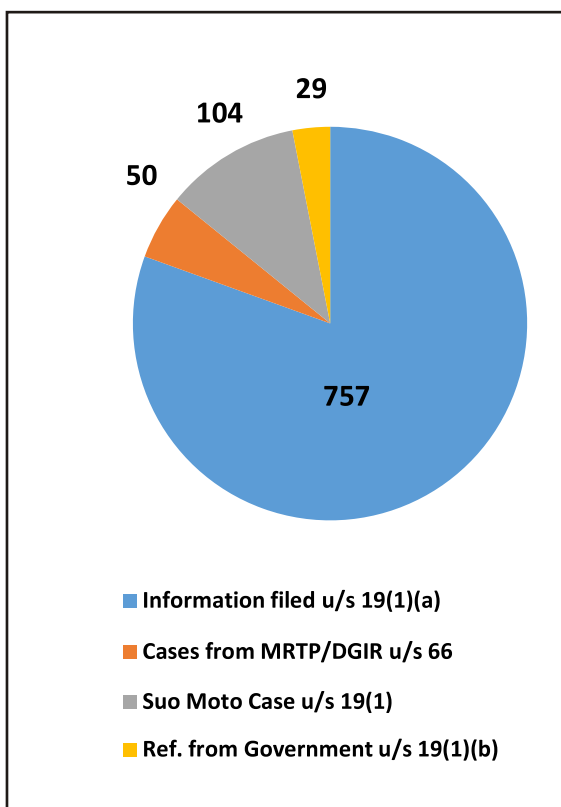
The Court held that the act of considering the invalid reference, if assumed to be, cannot mean that the Commission lacks its jurisdiction u/s 19 and 26, more particularly, when Section 19 also empowers the Commission to take *suo motu* action. Considering the sufficiency of such material details for forming a *prima facie* opinion is a matter for the Commission's satisfaction before ordering investigation and therefore, consideration of such sufficiency by the Commission cannot be questioned as the one without jurisdiction.

The Court at the time of hearing of the petition against the impugned order of the Commission made it clear that no views have been

expressed on the merits of the allegations made either in the reference or in the information made by the Federation and also on the *prima facie* opinion expressed by the Commission, since it is not a matter for this Court to go into the same and express its view, that too, at the preliminary stage, more particularly, when the matter is yet to be finally decided by the Commission by passing a final order. The grounds such as the manner, in which, the investigation has been conducted etc. are the matters held to be raised and agitated before the Commission or before the Appellate Tribunal as the case may be. Thus, the Court held the writ petition to be dismissed.

FIGURES SPEAK

ANTI-TRUST CASES: Matters Undertaken by CCI
(Under Section 3 & 4) (as on March 31, 2018) Total Cases: 940



Competition Issues in the Natural Gas Market in India

A transparent and efficient energy market is a pre-requisite to achieve India's growth ambitions. The share of natural gas in India's energy mix is six per cent and the government hopes to increase it to fifteen per cent by 2030. Given India's dependence on gas import and increased energy consumption, this sector becomes crucial for ensuring energy security. However, there are various factors impeding growth of this sector which need to be addressed and lack of effective competition is one of them.

The natural gas sector is largely owned by Public Sector Enterprises (PSEs) and is characterised by limited competition with negligible private participation. This market structure is a consequence of regulatory, structural, institutional and policy factors that govern the sector. For instance, the midstream and downstream Indian gas market is regulated by the Petroleum and Natural Gas Regulatory Board and the upstream market is regulated by the Directorate General of Hydrocarbons (DGH) under the administrative control of Ministry of Petroleum and Natural Gas. The role of DGH as a regulator blurs the desired boundaries between operator and regulator. This leads to a situation of incentive conflicts and vacuum in regulatory matters. Further, there is differential treatment for public and private entities. The Government compensates the PSEs for under recoveries whereas the private companies do not enjoy such luxuries. In order to develop competitive gas markets, the regulatory structure should aim at providing a level playing field for the private and public sector companies. This would increase private sector investment leading to greater market competition. Thus, in light of the above discussion, it can be said that barriers to entry, lack of level playing field and dominant position of few PSEs are

some of the crucial reasons limiting competition in this sector.

The natural gas industry in India is characterised by the presence of dominant enterprises in both upstream and downstream markets. In the transportation and distribution segment, a few companies hold major market shares. GAIL is a dominant player in gas transportation with more than 70 per cent market share. Some of the other major players in this sector are Indian Oil Corporation Limited, Hindustan Petroleum Corporation Limited etc. The CCI is investigating cases of alleged abuse of dominance by GAIL while dealing with its customers.

GAIL is present in both transportation and marketing of natural gas. Such bundling of transportation with sale of gas leads to conflict of interest and restriction of consumer choice. Here the need to separate carriage and content arises. Introducing open access to pipeline transportation or unbundling supply from transportation creates two distinct markets: the gas market, where participants trade natural gas and the transportation market, where participants trade transportation services for carrying gas through the pipeline network. As the global experience suggests, such a separation between natural monopoly segments and potentially competitive segments through unbundling ensures non-discriminatory access to the network, provides consumer with more choices and brings down tariffs due to increase in competition. Unbundling has been adopted in many countries to create necessary conditions for competitive gas supply markets. The U.S. Federal Energy Regulatory Commission made unbundling of production and transport mandatory and this enabled the producers to sell the gas directly and provided open access to the consumer. The

Government is also contemplating unbundling of GAIL's marketing and transportation activities. Natural gas transmission and marketing are GAIL's core businesses and unbundling its operations should facilitate competition, creating a competitive and favourable investment climate for public-private participation.

A competitive Indian gas market is the need of the hour as it provides options to the consumers to source gas from various suppliers, increased connectivity and access to the pipeline network, adequate infrastructure and competitive price environment etc. USA has a well-developed natural gas trading market known as Henry Hub that provides an important understanding into the mechanism of creation of markets for gas. Due to the strategic location along with deep price mechanism, multiple stakeholders' participation, adequate logistical infrastructure and easy access to pipelines, Henry Hub is referred for setting gas prices across the globe. The largest power-trading platform in India is the Indian Energy Exchange limited (IEX). It enables efficient price discovery and provides supplier options, to the consumers. It increases transparency and accessibility of the power market in India and aims for a competitive and reliable marketplace benefiting all the stakeholders. Likewise, a formation of gas trading hub in India would lead to open access and this trading platform would help discover prices in the domestic market for locally produced gas and imports. The Government has announced its plans to launch a natural gas trading hub to create an Indian gas benchmark, which will boost consumption of the cleaner fuel. As the government aims at building a gas-based economy, unbundling of carriage and content and developing a gas-trading hub are steps in the right direction.

KNOW YOUR COMPETITION LAW

Applicability of Section 4(2)(C) dealing with Denial of Market Access

The Act defines dominant position (dominance) in terms of a position of strength enjoyed by an enterprise, in the relevant market in India, which enables it to: a) operate independently of the competitive forces prevailing in the relevant market; or b) affect its competitors or consumers or the relevant market in its favour.

The Act gives an exhaustive list of practices that shall constitute abuse of dominant position and, therefore, are prohibited. Such practices shall constitute abuse only when adopted by an enterprise enjoying dominant position in the relevant market in India. Thus, abuse of dominance is

judged in terms of the specified types of acts committed by a dominant enterprise. Such acts are prohibited under the law. Any abuse of the type specified in Clauses (a) to (e) of Section 4(2) of the Act by a dominant enterprise or group shall stand prohibited.

Section 4(2)(c) of the Act provides that there shall be an abuse of dominant position if an enterprise, indulges in practice or practices resulting in denial of market access **[in any manner]**.

Hon'ble Supreme Court in its recent judgement in the matter of CCI v. Fast Way Transmission Pvt. Ltd. and Others¹ has clarified the position regarding applicability of

Section 4(2)(c). Earlier in the same case, Hon'ble COMPAT held that denial of market access is occasioned only to a competitor and in cases where two parties are operating at different levels of supply chain, there is no violation of the Act.

The Apex Court overturned COMPAT's order and held that once a dominant position is made out on facts, whether both the parties are competitors or not is a factor that is irrelevant for the purpose of application of Section 4(2)(c) of the Act. The words "**in any manner**" under Section 4(2)(c) are of wide importance and must be given their natural meaning.

ENGAGING WITH THE WORLD

I. Meetings were held on the side-lines of the ICN Annual Conference 2018 during March 20-23, 2018 at The Ashok, New Delhi with the following competition jurisdictions:

- i. Federal Trade Commission , United States of America on March 21, 2018
- ii. Department of Justice, United States of America on March 22, 2018
- iii. DG Competition , European

Commission on March 22,2018

- iv. BRICS Competition Authorities on March 22, 2018
- II. Following workshops/seminars organised under the EU-India Capacity Building Initiative for Trade and Development (CITD) program for the capacity building of CCI officers:

- i. Workshop on Knowledge Management on January 15, 2018 at EU Delegation office in New Delhi.
- ii. Workshop on Procedural Fairness on January 16, 2018 at CCI in New Delhi.
- iii. Workshop on Competition Impact Assessment for Policy Makers during February 15-16, 2018 at India International Center, New Delhi.

FORTHCOMING MAJOR ADVOCACY EVENT

The Competition Commission of India will commemorate 9th Annual Day on Sunday, May 20,

2018 at The Ashok, Chanakyapuri, New Delhi. Shri Rajiv Mehrishi, Comptroller and Auditor General

of India shall deliver the Lecture on "Competition Law 2.0 : Way Forward".

1. Civil Appeal No. 7215 of 2014

DEVELOPMENTS IN OTHER JURISDICTIONS

European Commission approved acquisition of Monsanto by Bayer

European Commission approved the acquisition of Monsanto by Bayer. The merger is conditional on the divestiture of an extensive remedy package, which addresses the parties' overlaps in seeds, pesticides and digital agriculture.

Monsanto is a supplier of seeds and pesticide whereas Bayer is the second largest supplier of pesticides worldwide. The transaction creates the largest global integrated seed and pesticide player.

Investigation conducted by Commission concluded that the transaction as proposed by companies will significantly reduce competition on price and innovation in Europe and globally on a number of different markets.

During the proceedings, Bayer proposed BASF as the purchaser of the main part of the remedy package comprising broad acre seeds and traits, pesticides and digital agriculture activities. Accordingly, Commission imposed condition for acquisition to divestiture to BASF as:

- a. BASF appears to be a suitable buyer because the fact that BASF does not currently sell seeds or non-selective herbicides means there are limited horizontal overlaps in these areas.
- b. Furthermore, BASF owns a complementary global pesticide business and it has the necessary financial strength to compete. A market test of competitors and customers was largely positive about the suitability of BASF as a purchaser.

European Commission fined Qualcomm €997 million for abuse of dominant position

European Commission (EC) has fined Qualcomm € 997 million for abusing its market dominance in Long-Term Evolution (LTE) baseband chipsets on January 24, 2018. Baseband chipsets enable smartphones and tablets to connect to cellular networks and are used both for voice and data transmission.

Qualcomm prevented rivals from competing in the market by making significant payments to a key customer Apple on condition that it would not buy from rivals. This is illegal under EU antitrust rules.

Qualcomm is world's largest supplier of LTE baseband chipsets. Another important chip manufacturer in this market is Intel which has tried to challenge and compete with Qualcomm.

Qualcomm signed an agreement with Apple in 2011 on condition that the company would exclusively use Qualcomm chipsets in its "iPhone" and "iPad" devices. The agreement had a condition that Qualcomm would cease payment, if Apple commercially launched a device with a chipset supplied by a rival.

As per this conduct of Qualcomm, its rivals were denied the possibility to compete effectively for Apple's significant business. They were also denied business opportunities with other customers that could have followed from securing Apple as a customer. Then, in September 2016, when the agreement was about to expire, Apple started to buy part of its baseband chipset from Intel. But until then, Qualcomm's practices denied consumers and other companies the benefits of effective competition, namely more choice and innovation.

EC found that Qualcomm is in a dominant position in the global market for LTE baseband chipsets

between at least 2011 and 2016 and has abused its dominance by preventing rivals from competing in the market. It did so by making significant payments to a key customer on condition that it would exclusively use Qualcomm chipsets. On this basis, the Commission fined € 997, 439, 000 taking into account of the duration and gravity of the infringement. The fine represents 4.9 per cent of Qualcomm's turnover in 2017.

Korea Fair Trade Commission (KFTC) sanctions Siemens for abuse of market dominance

KFTC imposed corrective orders and penalty surcharges of 6.2 billion won on Siemens, Siemens Healthcare and Siemens Healthineers for excluding small-and-mid-sized competitors from the maintenance service market for their CT and MRI equipment.

Siemens provided free access to the service software including the advanced version of automatic diagnosis function to hospitals that did not sign with the Independent Service Organization (ISO). This practice has strengthened the entry barriers of the maintenance market for Siemens CT and MRI equipment.

This is the KFTC's first enforcement case against abuse of market dominance in the aftermarket. The imposition of strong corrective orders on the violation of the laws in the medical equipment market which is directly related to the public health is expected to substantially improve competitive environment for SMEs and consumer welfare.

KFTC imposed the strong corrective orders in addition to the usual cease and desist order. It ordered Siemens to provide hospitals with access to the service software essential to the maintenance of their CT and MRI equipment within 24 hours at a minimum administrative cost.

ADVOCACY INITIATIVES

Advocacy Initiatives with Central Government, State Governments and PSUs

- i. Mr. S.L. Bunker, Member and Mr. Manish Mohan Govil, Adviser had an interactive meeting with Chief Secretary, Chhatisgarh and other senior officers of the State on January 05, 2018 at Naya Raipur.
- ii. Mr. Sudhir Mital, Member and Mr. Manish Mohan Govil, Adviser had an interactive meeting with Chief Secretary, Goa at Panaji on January 12, 2018.
- iii. Mr. S.L. Bunker, Member, Mr. Sudhir Mital, Member and Mr. Rakesh Kumar, Director delivered lecture on competition law organised by Pr CDA (WC) on January 19, 2018 at Chandigarh.
- iv. Mr. Sudhir Mital, Member, Mr. Manish Mohan Govil, Adviser and Mr. Gaurav Kumar, Director had an interactive meeting with Chief Secretary and other Senior Officers of Govt. of Uttarakhand held on February 23, 2018 at Dehradun and discussed the provisions of the Act.
- v. Mr. Manoj Pandey, Adviser delivered a lecture to district and session judges at Training Academy, Ranchi on January 28, 2018
- vi. Mr. Manish Mohan Govil, Adviser delivered a lecture on 'Advocacy of Competition Assessment in India: Role of CCI' in the workshop organised by ASCI on February 16, 2018 at New Delhi. Mr. Gaurav Kumar, Director, CCI also participated in the event.
- vii. Mr. Manish Mohan Govil, Adviser delivered lecture during a session on Competition Law in the workshop on February 20, 2018 at NACEN, Faridabad.
- viii. Mr. Yogesh Kumar Dubey, Dy Director delivered lectures in MDPs on Public Procurement organised by NIFM at Faridabad on January 08 and 11, 2018.
- ix. Dr Anil Kumar, Dy. Director was observer of CCI for the program conducted by IICA at their campus for industries in Manesar on February 06, 2018.
- x. Mr. Rakesh Bhanot, Adviser, CCI delivered lecture during a session on "Corporate Governance & Regulatory Compliances" on February 17, 2018 Neyveli, Tamilnadu.
- xi. Dr. Bidyadhar Majhi, Director delivered lecture on "Competition Issues in Public Procurement" and "Competition Impact Assessment" at NIFM, Faridabad on March 05, 2018.
- xii. Mr. Yogesh Kumar Dubey, Deputy Director delivered a lecture on "Competition Law" at NACIN, ZIT Saket on March 08, 2018.

Advocacy Initiatives with Trade Associations and Institutions

- i. Mr. Augustine Peter, Member addressed the participants in the inaugural session of ASSOCHAM 5th International Conference on Competition Law & Tech Sector January 19, 2018 at Bengaluru.
- ii. Mr. Augustine Peter, Member delivered the Keynote Address in the inaugural session of the Asia Pacific Workshop on Innovation, IP and Competition on 5th February, 18 at New Delhi
- iii. Mr. P. K. Singh, Adviser delivered lecture during Conference on competition law and other issues organised by FICCI at Pune on January 09, 2018.
- iv. Mr. Apurv Agrawal, Jt. Director delivered a lecture on competition law in the program organised by All India Rubber Manufacturer's Association on February 16, 2018.
- v. Mr. Rajinder Kumar, Joint Director delivered lecture on competition issues in glass industry organised by All India Glass Manufacture Association on February 24, 2018 at Firozabad.
- vi. Mr. Manish Mohan Govil, Adviser took an interactive session during CII Eastern Regional Council Meeting on February 27, 2018 at Kolkatta.

Advocacy Initiatives with Universities/Institutes

- i. CCI-NLUD Moot Court was organised in collaboration with the NLU Delhi during February 16-18, 2018. Mr. U.C. Nahta, Member, CCI inaugurated the moot court competition. Mr. Augustine Peter, Member and Ms. Smita Jhingran, Secretary were judges in the final round and were also present during the valedictory session. Mr. Manish Mohan Govil, Adviser, delivered the Welcome Address. Mr. Anand Vijay Jha, Addl. DG delivered the Vote of Thanks. Mr. Anand Vijay Jha, Addl DG and Mr. Ved Prakash Mishra, Director were judges for semifinal rounds. Mr. K.D. Singh, Joint Director, Mr. Kamal Sultanpuri, Dy Director, Ms. Sunaina Dutta, Dy Director and Mr. Mukul Sharma, Dy Director were judges for quarter final rounds of the competition.
- ii. Mr. Manoj Pandey, Adviser and Mr. Anand Vikas Mishra, Deputy Director were the

- judges for the finals and semifinals respectively of the Tamil Nadu National Law School University Moot Court Competition 2018 on February 04, 2018 at Tiruchapalli.
- iii. Ms. Payal Malik, Adviser made a presentation on "Contemporary IP and Competition Issues on Online Platforms" at Asia Pacific Workshop on Innovation, IP and Competition organised by Centre of Innovation, Intellectual Property and Competition (CIIPC), NLU, New Delhi on February 06, 2018.
 - iv. Mr. Saurabh, Dy Director (Eco) and Mr. V. Sriraj, Dy Director (Law) were resource persons for the workshop organised by DSNLU on competition law on February 24, 2018.
 - v. Mr. P.K.Singh, Adviser and Mr. V. Sriraj, Dy Director were judges for Finals for Semifinals rounds respectively of the DSNLU - 4th Damodaram

- Sanjivayya National Moot Court Competition on February 25, 2018.
- vi. Prize money was sponsored for Ninth NLU Antitrust Law Moot Court Competition, 2018 organised by NLU, Jodhpur from March 16-18, 2018.
 - vii. Mr. K.P. Anand, Dy Director and Mr. Yogesh Dubey, Dy Director were judges for semi-finals for Moot Court Competition at Rajiv Gandhi National University of Law (RGNUL), Patiala on March 30, 2018.
 - viii. Mr. Kuldeep Kumar, Jt. Director was judge for the finals and Mr. Anand Vikas Mishra, Dy Director was judge for semi-finals for Moot Court Competition organised by G.D. Goenka University, Gurgaon on March 25, 2018.

Other Activities

- i. 19 students underwent internship during the period.

CAPACITY BUILDING EVENTS

- 1) CCI organized lecture by Dr. Rajiv Kumar, Vice-Chairman, NITI Aayog on the topic 'New India: 2022' under the Distinguished Visitor Knowledge Sharing Series (DVKS) on January 23, 2018 at CCI.



- 2) CCI organized lecture by Sh. Pavan Duggal, Advocate-Supreme Court of India and President CyberLaws.Net on the topic 'Cyber Law from CCI's Perspective' under the Distinguished Visitor Knowledge Sharing Series (DVKS) on February 02, 2018 at CCI.
- 3) CCI organized 2 Half-days In-house Hands-on Training on 'MS-Excel' on January 24 & February 15, 2018 for the officers of CCI.
- 4) CCI organized half-day In-house Workshop on 'Understanding of

- Basic Law through Legal Phrases/ Terminologies'* on February 02, 2018 for officers of CCI.
- 5) CCI organized half-day In-house Training Programme on 'Analysis of Financial Statements' on January 17, 2018 for officers of CCI.
 - 6) Two professional officers from CCI participated in a Training Programme on 'Advanced Issues in Competition Law' organized by National Law School of India University (NLSIU) during February 26-27, 2018 at India International Center, New Delhi.



Team CCI after successful hosting of ICN Annual Conference, 2018. New Delhi



Visit of the Rashtrapathi Bhawan by the delegates of the ICN Annual Conference, 2018.

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

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