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Fair competition
for greater good

Fair Play

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ICN Merger Workshop 2014

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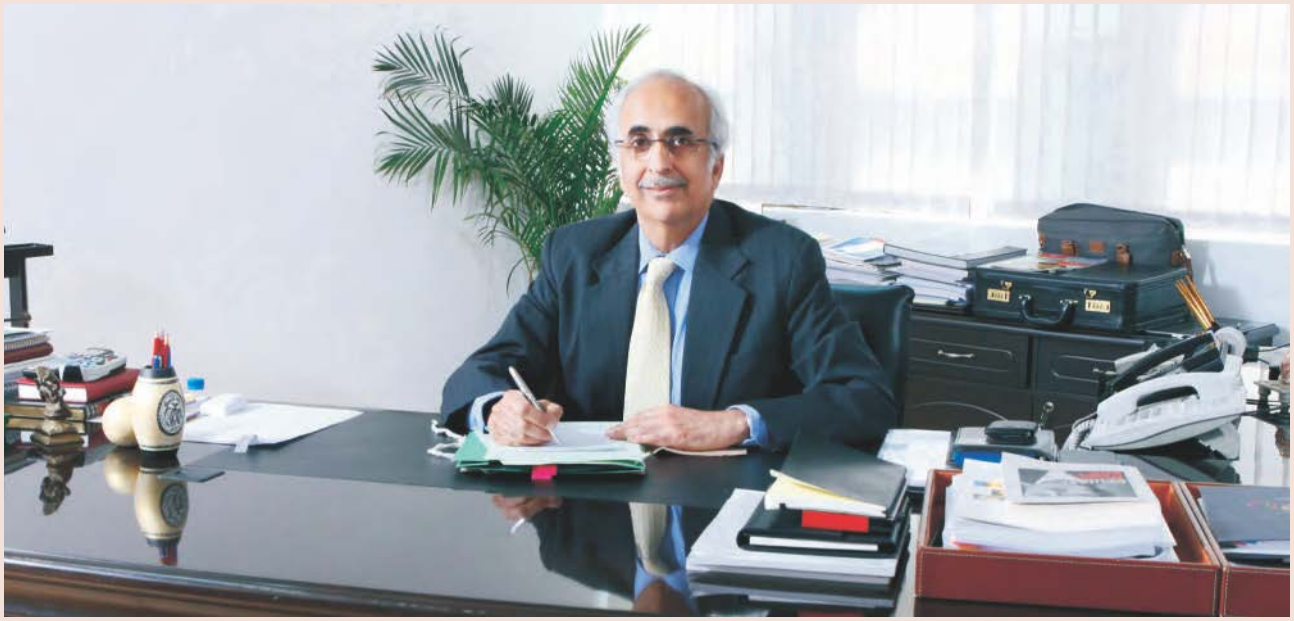
FROM THE DESK OF THE CHAIRPERSON



A sensitive area of competition law is its extra-territorial reach. With globalisation, it is quite logical that the anti-competitive act of a firm may have effect not only in its home country, but even in other countries where it has commercial interests. The 'effects doctrine' is now well established in international competition law and nations can take jurisdiction over offshore conduct of firms that harm their markets.

A corollary to this is International Co-operation in the enforcement of competition law. Competition cases increasingly involve more than one competition law jurisdiction: for example, global cartels, cross-border mergers and abuse of dominance by multinational corporations. This has underlined the need for competition authorities to co-operate with each other. One form this takes is bilateral co-operation agreements between countries. As for a multilateral agreement, there is one under the aegis of the UNCTAD. It is known as the 'United Nations Set of Multilaterally Agreed Equitable Principles and Rules for the Control of Restrictive Business Practices'. This is, however, not a binding agreement; it only recommends general principles to member countries. Some years ago an effort was made to include competition law and policy in WTO negotiations with a view to developing a multilateral framework, but this did not move ahead due to lack of agreement.

The need for a network of competition enforcers, however, continued to grow since the world is much more inter-dependent in terms of business. Hence, the birth of the International Competition Network (ICN) which is a voluntary grouping of competition authorities. Starting with 15 members in 2001, it now has a membership of over 120 countries. The ICN is thus a big family and it has a big vision. The vision is to encourage co-operation and harmonise the work of its members. The objective is better enforcement of competition principles and, at the same time, more transparency and predictability for external stakeholders.

Ashok Chawla

ICN Merger Workshop 2014

Mr. Arun Jaitley, Hon'ble Union Minister of Finance, Corporate Affairs and Information & Broadcasting inaugurating ICN Merger Workshop 2014. Also seen in picture (L to R) are Dr. J. Luebking, Head of Merger Division, DG COMP, EC, Mr. John Pecman, Commissioner, Canada Competition Bureau, Mr Ashok Chawla Chairperson CCI. Ms. Bhawana Gulati, Deputy Director CCI assisting the dignitaries.

ICN was set up with a view to create more effective enforcement of antitrust law in the context of economic globalization. The ICN serves to share experiences and exchange views on competition issues deriving from an ever-increasing globalisation of the world economy, as well as to encourage the dissemination of antitrust experience and best practices, promote the advocacy role of antitrust agencies and seek to facilitate international cooperation. The ICN was announced publicly on 25.10.2001 in New York.

The ICN is currently chaired by Mr. Andreas Mundt, President of the Bundeskartellamt. The Chair is supported by a Steering Group, including three Vice Chairs who are responsible for projects on outreach, international coordination, and advocacy and implementation.

The ICN is intended as a virtual structure without any permanent secretariat, flexibly organised around its projects, guided by a steering group to identify projects and devise work plans for approval of the ICN as a whole. 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:

Mr. Arun Jaitley, Hon'ble Union Minister of Finance, Corporate Affairs and Information & Broadcasting releasing 'Competition Tracker 2013' a compendium of cases decided by CCI in the year 2013.

Cartel Working Group

Merger Working Group

Unilateral Conduct Working Group

Advocacy Working Group

Agency Effectiveness Working Group

Competition Commission of India (CCI) co-chairs the Merger Working Group along with the Canadian Competition Bureau, the European Commission, DG Competition. ICN members and experts convene annually at ICN conferences organized by one of its member agency to discuss working group projects and their implications for enforcement. The latest ICN Merger Workshop was hosted by the CCI during December 1-2, 2014. The theme of the workshop was "International Cooperation in Merger Enforcement". The Union Minister of Finance, Corporate Affairs and Information & Broadcasting Shri Arun Jaitley delivered the Inaugural Address at the Opening Session of the ICN Merger Workshop 2014.

ICN Merger Workshop 2014 in Progress

ICN Merger Workshop Delhi 2014

The ICN Merger Working Group (MWG) has organized nine ICN Merger Workshops: hosted in Washington (2002), Brussels (2004), Washington (2006), Dublin (2007), Pretoria (2007), Brno (2008), Taipei (2009), Rome (2010), Bogotá (2012) and, more recently Delhi (2014). These workshops have highlighted MWG work on notification and procedures, investigative techniques, and merger analysis.

The recent ICN Merger Workshop was hosted by the Competition

Session at ICN Merger Workshop 2014 in Progress

Commission of India under ICN auspices in New Delhi at Ashoka Hotel on 1st and 2nd December 2014. The theme of the Workshop was "*International Cooperation and Remedies in Merger Review*". The Workshop was attended by various dignitaries from India and abroad from the competition and related fields. A list of various dignitaries who were present on different events of the Workshop included the Hon'ble Mr. Justice G.S. Singhvi, Chairperson, COMPAT, Mr John Pecman, Commissioner, Canadian Competition Bureau, Dr. J. Luebking, Head of Merger Division, EU, foreign and Indian delegates including the senior officers from the various departments of the Government and the officials of the CCI.

The Workshop was inaugurated by Mr Arun Jaitley, the Hon'ble Union Minister of Finance, Corporate affairs and Information and Broadcasting. In his inaugural remarks, Mr. Arun Jaitley stressed the need for sharing of the global experiences in the field of mergers and acquisitions for better understanding and development of competition law and practice.

The two day Workshop consisted of four Plenary sessions, besides the inaugural, breakout sessions after Plenaries and the closing session. As the theme of the Workshop suggests, discussion during the workshop primarily focussed on the issues and challenges faced in international cooperation particularly on the aspect of designing of remedies in multijurisdictional merger cases. A Plenary session in the Workshop was dedicated to deliberation on a Hypothetical case study dealing with various practical aspects of international cooperation and designing of remedies in multijurisdictional filings. The Chairperson, Competition Appellate Tribunal Mr. Justice G.S. Singhvi, delivered the valedictory address during the closing session of the Workshop.

Knowledge Sharing for International Cooperation

The objective of the Workshop was to discuss and share experiences on various issues and challenges faced by the competition authorities world over in the area of international cooperation in case of multijurisdictional merger notifications and designing the non-conflicting remedies. Discussion held during the two-day Workshop, primarily focussed on the role of international cooperation in the merger enforcement and extant mechanism for cooperation among competition agencies. The

Workshop also furthered efforts towards on building up of an effective framework for international cooperation in merger remedies and highlighting the importance of outreach initiatives in merger control activities.

The Workshop brought competition agencies both young and mature and Non-Governmental Agencies (NGAs) together on a single platform of knowledge sharing in the area of international cooperation and remedies in merger enforcement. Brief details of the Plenary / Hypothetical sessions are as under:

Plenary Session on International Merger Enforcement Cooperation:

The topic of discussion was *"International cooperation among competition agencies"* in the wake of ever increasing size of the globalised economies. Important discussions during the Plenary focussed on the need for cooperation in the area of international merger enforcement, issues faced by various jurisdictions on effective cooperation and ways and means to improve formal as well as informal cooperation among the jurisdictions. A summary of the discussions held in the Plenary is as under:

- In context of a globalised economy with ever increasing number of multinational companies, increasing trade among the nations and dependence of the economies on each other, the importance of international cooperation in the competition law enforcement need not be emphasized. In case of cross border mergers, such co-operation may help to achieve more efficient and effective enforcement for the benefit of the agencies, the merging parties and the consumer.
- ICN Merger Working Group (MWG) has also been working towards the development of a work product on the framework of international cooperation in merger cases, to help provide the guidance on collaboration between the agencies reviewing the merger.
- The discussions that were held in this session regarding the ways to enhance multilateral cooperation mainly related to: (a) need and pre-conditions for effective cooperation; establishing and maintaining communication between the agencies; (b) aligning the timetable; (c) sharing the information, and issues relating to waivers (d) cooperation on substantive issues and (e) cooperation on designing the remedy and its implementation.
- A general view emerged in support of including the substantive issues in the

Mr. Arun Jaitley, Hon'ble Union Minister of Finance, Corporate Affairs and Information & Broadcasting delivering Inaugural Address at ICN Merger Workshop 2014

Opening remarks by Mr. John Pecman, Commissioner, Canada Competition Bureau

framework on international cooperation.

- There was also a general consensus that cooperation between the agencies should attempt to ensure that remedies do not impose conflicting or inconsistent obligations on the parties.

During the course of deliberations, the NGAs provided useful insights regarding what could help to make the framework a tool which could be easy to use in practice. These inputs would allow a better understanding of the role of the parties in facilitating effective international cooperation as well as need to avoid unnecessary burden on the business.

Remedies:

- Considering the impact of the decisions of the respective competition agencies, in case of cross-border M&As, on other agencies, effective, consistent and timely outcome or remedies become critical. In this Plenary session, therefore, the discussion primarily centred on the need for timely and consistent remedies, types and pros and cons of different types of remedies etc. A summary of the discussions held in the Plenary is as under:

- The need and importance of effective remedies can be gauged from the fact that the majority of the competition agencies strive to design and implement efficient and effective remedies that are tailored to address the anti-competitive effects resulting from a merger.

- The role of the ICN Merger Working Group (MWG) in the area of international cooperation, enforcement of remedies and various work products developed by the MWG also need no emphasis. The new and the young competition agencies, with inadequate experience to handle the issues posed by the complex M&A cases, especially those involving cross border connections, may refer to various guidances on merger remedies provided by the MWG. This guidance provided by the MWG highlights the key principles and the range of available tools and also illustrates examples of the remedies practised across a number of jurisdictions. This guidance in the form of best practices is subject to upgradation, from time to time, on the basis of the experiences gained and lessons learnt by the agencies.

- The Remedies session thus, proved to be an useful platform

for the lively discussions, real world illustrations and exchange of learning. The participants also discussed about the appropriateness, advantages and disadvantages of the structural and the behavioural remedies. The pros and cons of the measures such as upfront buyers, crown jewels and divestiture trustees etc. were also deliberated upon with the session. The experts in this area alongwith the professionals and the participants addressed the challenges associated with the remedies in case of multi-jurisdictional mergers.

- Apart from the above, the discussions about the behavioural remedies emphasized on the problems of designing and monitoring issues such as pricing etc. During the course of discussions, the participants also deliberated on the role of third parties in designing the remedies and of monitoring trustees in the entire process.
- In the course of discussions, a common point emerged regarding the role of efficiencies which may emanate from a merger. It was a general view that the remedies should be designed in a manner that there is least compromise with the efficiencies which could emanate from a merger.

Finally, the members from the various agencies shared their experiences about conducting the ex-post analysis of the remedies. The experience shared by the agencies suggested that an ex post analysis of the remedies could also serve as a valuable guide to better design both the structural and behavioural remedies.

Outreach:

The third plenary session deliberated on the objective of the Outreach. The summary of the discussions held in this Plenary is under:

- The Plenary provided a good insight into the usefulness of various MWG Work Products which represent the global best practices and a consensus reached between the public and the private sector in course of time.
- The aim of the MWG Work Products is to ensure effectiveness of the M&A enforcement and reduce cost of domestic and multijurisdictional merger review. The Recommended Practices on Notification and Procedure alongwith some other guidelines and templates contribute maximum towards this goal.
- The Plenary looked at the perspectives provided by Brazil and the EU on international cooperation in the field of multijurisdictional M&As and noted that both the experiences pointed at the valuable guidance provided by the ICN MWG on cooperation and the modalities of the cooperation.
- The Plenary looked into the future projects and the recently updated work product catalogue which provides a useful tool to access all the MWG work products. It was decided that for going forward, ICN would follow an implementation agenda centred around the awareness, assessment of the work products and also technical assistance. A view was expressed that the ICN framework for merger cooperation would be designed to encourage and facilitate cooperation in merger enforcement.

Hypothetical:

The fourth and last Plenary session of the Workshop was devoted to an interesting Hypothetical case study which allowed the participants to gain practical experience on the issues involved in enforcement, assessment, designing of remedies and international cooperation in the complex merger cases having cross border implications. The Hypothetical case related to the pharma sector. While working through the Hypothetical case study, the participants relied on various MWG work products ranging from the Recommended Practices to the draft framework on the principles of international cooperation in merger review, to guide them through the analysis of the Hypothetical case. While acting as members from one of the two reviewing jurisdictions, the participants identified the potential anti-competitive issues, designed the most effective remedies and worked out between them the most efficient way to collectively enforce and monitor the remedies. There were certainly divergent viewpoints on some of the aspects like divestiture package, potential buyer and treatment of the pipeline products, regarding the case study, which were also discussed in detail among the members of the teams.

Indian Jute Mills Association & Gunny Trade Association were Penalised for Anti-Competitive Conduct

In Case No. 38 of 2011, the Competition Commission of India imposed a penalty of Rs. 7.68 Lakhs and Rs. 35.16 Thousands (@5% of the average of the turnover for the last 3 financial years) on Indian Jute Mills Association (IJMA) and Gunny Trade Association (GTA) respectively for contravening the provisions of section 3 of the Competition Act, 2002.

The final order was passed by CCI on 31.10.2014 on an information jointly filed by Indian Sugar Mills Association, National Federation of Co-operative Sugar Factories Ltd. and All India Flat Tape Manufacturers Association alleging anti-competitive agreement by the members of IJMA and GTA in fixation of sale price of jute packaging material by issuing of Daily Price Bulletin (DPB) by GTA for jute bags for the members of IJMA and the GTA to follow.

The Commission found the impugned acts/conduct of IJMA and GTA to be in contravention of the provisions of section 3(3) (a)/ 3(3) (b) read with section 3(1) of the Act.

Apart from issuing a cease and desist order against the associations and imposing penalties upon them, the Commission also imposed penalties on the persons who were members of the Executive Committee of IJMA and the Executive Committee and the DPB Sub-Committee of GTA @ 5% of the average income of the last three financial years.

The Commission also noted in the order that the provisions of the Jute Packaging Materials (Compulsory Use in Packaging Commodities) Act, 1987 placing statutory requirement on the sugar mills to undertake sugar packaging using jute bags produced in India only, against the principle of competitive neutrality as the entities manufacturing matching products were denied market access. Such a policy was further noted as not only restricting the choice of customers like sugar mills but was also potentially found to be escalating the cost ultimately borne by the end-consumers. Accordingly, the Commission desired the Government of India to re-assess the current market situation for removing the market distortions arising out of such policy.

Chemists & Druggists Association, Goa Penalised for Anti-Competitive Conduct

In Suo Moto Case No. 05/2013, the Commission has found the Chemists & Druggists Association, Goa (CDAG) to be in contravention of the provisions of the Competition Act, 2002. The Informant, M/s Xcel Healthcare had approached the Commission alleging contravention of Commission's earlier order dated 11.06.2012 in the matter of M/s Varca Druggist & Chemist and Ors. in case no. MRTP-C-127/2009/DGIR (4/28) by indulging in anti-competitive conduct by CDAG. It is alleged that CDAG was insisting the pharmaceutical companies to stop their dealings with the Informant as it was not an authorized stockist of CDAG. In view of frequency of such anti-competitive issues pertaining to various chemists & druggists associations in the country and earlier order issued against CDAG in case no. MRTP-C-127/2009/DGIR (4/28), the Commission took the matter suo-moto and directed the Director General (DG) to carry out fresh investigation in the matter.

Subsequent to detailed investigation, the Commission found that CDAG was continuing to exercise control on the supply chain through which drugs and medicines are made available in the market by mandating the requirement of LOC/NOC prior to appointment of stockists by pharmaceutical companies even though CDAG has no legal or statutory authority to do so. Further, the Commission observed that CDAG had serious reservations against appointment of the Informant as a stockist by pharmaceutical companies and accordingly, it coerced such companies to refrain from routing supplies through the Informant.

The Commission directed the CDAG and its office bearers & executive committee members to seize and desist from indulging in the practices which are found to be anti-competitive in terms of the provisions of section 3 of the Act.

Keeping into consideration the fact of continuous contravention and disregard of Commission's earlier order, the Commission imposed a penalty of Rs. 10,62,062.671/- (Rupees ten lakhs sixty two thousand and sixty two rupees only) on CDAG.

SECTION 5 & 6 ORDERS

Commission Approves the Proposed Merger Between

and

Subject to Modification (C-2014/05/170)

- Sun Pharmaceuticals Industries Limited (Sun Pharma) and Ranbaxy Laboratories Limited (Ranbaxy) ("parties") filed a notice for the merger of Ranbaxy into Sun Pharma to the Commission on 06.05.2014.
- Sun Pharma is an integrated specialty pharmaceutical company. It manufactures and markets a large basket of pharmaceutical formulations as branded generics in India, USA and several other markets across the world. Ranbaxy is a vertically integrated company that *inter alia* develops manufactures and markets generic, branded generic, over-the-counter (**OTC**) products, Active Pharmaceutical Ingredients (APIs) and intermediates.
- The Commission in its meeting held on 07.07.2014 formed a *prima facie* opinion that the proposed combination is likely to cause an appreciable adverse effect on competition in the relevant markets in India. Accordingly, a show cause notice was issued to the Parties under sub-section (1) of Section 29 on 16.07.2014, as per which the Parties were directed to respond, in writing, within thirty days of the receipt of SCN, as to why investigation in respect of the proposed combination should not be conducted. The Commission also invited comments/objections/ suggestions in writing, in terms of the provisions of sub-section (3) of Section 29 of the Act, from any person(s) adversely affected or likely to be affected by the proposed combination vide publication of details of combination on 04.09.2014 which were considered by the Commission in its assessment of the proposed combination.
- The Commission observed that both the Parties are engaged in the manufacture, sale and marketing of various pharmaceutical products including formulations/medicines and APIs. Both the Parties are primarily generics manufacturers (i.e., producers of generic copies of originator drugs) with a small number of licensed molecules. The Commission noted that various generic brands of a given molecule are chemical equivalents and are considered to be substitutable. Therefore, the molecule level would be most appropriate for defining relevant markets on the basis of substitutability.
- Alternatively, pharmaceutical drugs falling within a therapeutic group may also be considered as constituting a potential relevant market. However, in this regard

it was noted that the pharmaceutical drugs within a group may not be substitutable because of differences in the intended use, mechanism of action of the underlying molecule, mode of administration, contra-indications, side effects etc. Further, the Commission observed that in generics markets, competition primarily takes place between different brands based on the same molecule. Accordingly, the Commission considered it appropriate to define the relevant product market at the molecule level, i.e., medicines/formulations based on the same API could be considered to constitute a separate relevant product market.

- The Commission observed that there are horizontal overlaps between the products of the Parties in various molecules. The relevant market of formulations based on each of these molecules was examined for the purpose of competition analysis of the proposed combination. On the basis of combined market share of the Parties, incremental market share as a result of the proposed combination, market share of the competitors, number of significant players in the relevant market, etc., the Commission focussed its investigation on some relevant markets for formulations where the proposed combination was likely to have an appreciable adverse effect on competition in the relevant market in India. In addition to these relevant markets, the Commission also investigated two pipeline products of Ranbaxy and possibility of any vertical foreclosure in the market for active pharmaceutical ingredients (APIs).
- On the basis of its assessment, the Commission decided that the proposed combination is likely to result in appreciable adverse effect on the competition in India in relevant markets for seven formulations; however such adverse effect can be eliminated by suitable modification under the provisions of the Competition Act, 2002. Therefore, in terms of Section 31(3) of the Act, the Commission proposed certain modifications to the proposed combination to the Parties. However, the Parties proposed certain amendments to these modifications under Section 31(6) of the Act.
- The Commission in its meeting held on 05.12.2014 considered the amendments proposed by the Parties and accepted one of the amendments. The Commission thus approved the proposed merger between Sun Pharma and Ranbaxy, under Section 31(7) of the Act, subject to the Parties inter alia carrying out the divestiture of their products relating to seven relevant markets for formulations. Further, the Commission also directed that the proposed merger shall not take effect before the Parties have carried out the divestiture of the products so specified as per the order of the Commission.

Commission Approves the Combination Between GlaxoSmithKline PLC and Novartis AG (C-2014/07/188)

- GlaxoSmithKline plc ("GSK") and Novartis AG ("Novartis") *("parties") filed a* notice with the Commission on 03.07.2014 in relation to three inter-conditional and inter-dependent transactions. As per the information provided in the notice, the proposed combination related to the following transactions:
  - Acquisition of the global human vaccines business of Novartis (excluding its influenza vaccines business) by GSK ("Vaccines Transaction");
  - Formation of a consumer healthcare joint venture ("J.V."), in which GSK will own an equity interest of 63.5 per cent and Novartis, will own the remaining 36.5 per cent equity interest ("Consumer Healthcare Transaction"); and
  - Acquisition of GSK's business relating to a portfolio of oncology products (excluding manufacturing) by Novartis ("Oncology Transaction").
- GSK is a global healthcare company which is stated to be active in three primary areas, namely, pharmaceuticals, vaccines and consumer healthcare. As per the information provided in the notice, in India, GSK has been active through its various subsidiaries. Novartis, another global company is the ultimate holding company of a multinational group of pharmaceutical companies that are stated to be active in six broad areas of healthcare namely, pharmaceuticals, eye care, generics, animal health, consumer health and vaccines. In India, Novartis is present in all the aforesaid areas of healthcare and operates through four entities.
- As per the information provided in the notice, GSK offers vaccines for the immunisation against a number of infections, in India, including DTP (diptheria, tetanus and pertussis (whooping cough)). However, Novartis was not active in the sale of vaccines for any of these infections and sold vaccines in India only for immunization against rabies and recently launched a pentavalent DTP vaccine in India. The Commission observed that Novartis sells a DTPw pentavalent vaccine in India, which protects against the five infections, whereas GSK sells a trivalent DTPa vaccine in India, which provides protection against the three infections. In this regard, the Commission observed that if the DTP vaccines of the Parties are considered to be in different relevant product markets, there is no overlap between the products of the Parties in Vaccine Transaction. However, if the DTP vaccines of the Parties are considered to be substitutes, it was noted that in 2013, the market share of the parties was insignificant. Further, there are other significant players present in this market like Bharat Serums, Sanofi Aventis, etc. The Commission also assessed the possibility of horizontal overlap between some of the pipeline products of the Parties and the possibility of input foreclosure or customer foreclosure due to potential vertical integration.
- In Consumer Healthcare Transaction, it was noted that Parties have overlapping products; however in none of these segments, the combined market share of GSK and the business of Novartis being transferred to the J.V. is significant enough to raise any competition concern. In addition, the Commission also assessed the possibility of horizontal overlap between one of the pipeline products of the Parties.
- Pursuant to the Oncology Transaction, Novartis will acquire eleven existing oncology products and two pipeline products of GSK. As per the information given in the notice, out of these eleven products

being acquired by Novartis, only four products are currently being sold in India by GSK. It was noted from the information given in the notice that Novartis does not sell formulations containing any of the above said four molecules in India. Accordingly, the Commission observed that if the formulations based on the same molecule are considered to constitute a separate relevant product market, there is no overlap between the existing oncology products of Novartis and the oncology products being acquired by Novartis from GSK in India. However, the oncology pharmaceutical products may also be differentiated on the basis of the type/stage of cancer, line of treatment and mechanism of action. In this regard, the Commission sought opinion from the leading hospitals in India in relation to the oncology products of GSK and Novartis. These institutions confirmed that the oncology products of the Parties cannot be used interchangeably during the course of treatment of the patients in India. In addition, the Commission also assessed the possibility of horizontal overlap between one of the pipeline products of the Parties and observed that these products are based on different molecules which can also be differentiated on the basis of the type/stage of cancer targeted, line of treatment and mechanism of action.

- The Commission thus concluded that proposed combination is not likely to result in any appreciable adverse effect on competition in India and accordingly, approved the combination under sub-section (1) of Section 31 of the Act.

INVESTIGATION INITIATED

Saurabh Tripathy v. M/s Great Eastern Energy Corporation Ltd. (GEECL)

CCI in Case No.63 of 2014, Saurabh Tripathy (informant) v. M/s Great Eastern Energy Corporation Ltd. (OP), after forming prima-facie opinion under section 26(1) of Competition Act, 2002 (the Act), directed DG to initiate investigation into the alleged abuse of dominance, as per section 4 of the Act, by the OP.

The matter cropped up on information filed against OP (GEECL) for its alleged abuse of dominance in sale of Coal Bed Methane (CBM gas) as fuel to the informant's employer M/s SRMB Srijan Ltd. which uses CBM for its two steel rolling mills in Bardhaman District of West Bengal. Parties said to have entered into a Gas Sale and Purchase Agreement (GSPA).It is alleged that GEECL, being in dominant position in the relevant market of supply and distribution of CBM gas in Asansol-Raniganj-Durgapur belt of West Bengal, has been supplying CBM on terms & conditions (of GSPA) heavily loaded in favour of GEECL.

Determining relevant market Commission, considering averments in information, observed that Asansol-Raniganj-Durgapur region, in itself, is a unit, isolated from any other CBM market. Further, the conditions of competition for supply of CBM are stated to be homogenous for all consumers within the region and are further stated to be distinguishable from the conditions prevailing. Commission thus delineated the relevant market as the market for 'the supply and distribution of natural gas to industrial consumers in Asansol-Raniganj-Durgapur region in the State of West Bengal'.

After careful examination of allegations and the terms of GSPA, the Commission prima facie observed that conduct of GEECL appears to be abuse of its dominant position in the determined relevant market vis-à-vis informant which is in contravention of provisions of section 4 of the Competition Act.

DEVELOPMENTS IN OTHER JURISDICTIONS

France Fines 13 Consumer Goods Firms €951m for Price-Fixing

Some of the world's biggest consumer products companies, including Unilever, Reckitt Benckiser, Procter & Gamble and Gillette, have been fined a combined €951m (£748m) by the French competition watchdog for price fixing in supermarkets.

The regulator said the 13 companies, which also include Colgate-Palmolive, Henkel, L'Oréal, Beiersdorf and Johnson & Johnson's Laboratoires Vendôme, had colluded on price increase between 2003 and 2006.

During this period, the companies allegedly met regularly to coordinate their commercial and pricing policies. According to the authority, the suppliers made their proposals "with the assurance that they would never find themselves disadvantaged and isolated during business negotiations with the distributors".

In the personal care sector, these meetings also allowed the companies to develop a common bargaining strategy and to prepare joint arguments to justify price increase, which were up to 6 per cent at a time. The companies also shared information on negotiation processes, turnovers and terms and conditions.

France's Autorité de la concurrence imposed sanctions totalling €345.2m related to cleaning products and a further €605.9m related to personal hygiene products. Most companies received two fines. L'Oreal will have to pay 189.5 million euros, the largest fine, while Unilever received the second-largest penalty of 172.5 million-euro.

The combined 606 million-euro fine in the personal-care industry is the highest handed down by France's antitrust arm.

The level of fines was adopted taking into account the degree of the companies' individual participation in the practices and also specific elements linked to their behaviour and their individual situation by the authority.

European Commission Clears Acquisition of Statoil Fuel & Retail Aviation by Rival BP

European Union competition authorities gave conditional clearance for oil major BP (BP.L) to acquire jet fuel business Statoil Fuel and Retail Aviation (SFRA). The decision is conditional upon the divestment of SFRA's activities at the airports of Stockholm, Malmö, Gothenburg and Copenhagen to remove concerns that increased concentration there would have led to price increase of fuel for airlines.

Both companies operate in the market for supplying aviation fuel directly to planes at airports, and between them operate at more than 80 airports globally.

The Commission's investigation showed that the barriers to entry the market for new players and even for the expansion of already active suppliers are high, due to difficulties in gaining access to the necessary infrastructure and differences in supply chain costs. Moreover, most airlines appear to have insufficient buyer power to counteract the consequences of an increased concentration in the supply of aviation fuel at these airports. The Commission therefore had concerns that the proposed transaction would have led to price increases for airlines.

"These divestments would remove the entire overlap with regard to the supply of aviation fuel. Moreover, the divestments would allow the entry of an additional aviation fuel supplier at these four airports," the EU antitrust regulator said.

ADVOCACY INITIATIVES

Advocacy Initiatives with World Bank

Presentation by Senior Procurement Specialists of the World Bank on 'Procurement & Competition Regulation' organised on 13th October, 2014 at CCI.

Advocacy Initiatives with Universities/Institutions

- Shri Sukesh Mishra, Joint Director (Law) participated in a Seminar on Competition Issues conducted by Indian Institute of Management, Kashipur on 3rd December, 2014.
- Shri R. N. Sahay, Adviser (Eco), delivered a lecture on Competition Issues to the students of Chandragupt Institute of Management, Patna on 12th December, 2014
- Ms Payal Malik, Adviser(Eco) and Shri Sukesh Mishra, Jt. Dir (Law) attended a meeting held by World Bank on 12th December, 2014 at their office premises in New Delhi regarding World Bank Review of Operational Procurement Policy Consultation with Stakeholders
- Dr Satya Prakash, Director (Law) participated as a Speaker in one of the panel discussions on the topic "Competition Law Compliance: Why is it necessary?" during the Legal Era Competition Law Summit, 2014 held on 13th December, 2014 in New Delhi

Shri Sukesh Mishra, Jt. Dir (Law) held a session on 'Competition Act' on 21st November, 2014, as part of the Training Programme conducted by ONGC at their office in Scope Minar, Laxmi Nagar, Delhi - 110092

Ms R. Bhama, Adviser (Law) and Shri Sukesh Mishra, Jt. Dir (Law) made a Presentation on competition issues followed by interaction with Industry Members in an Advocacy event organised by FICCI at Mumbai on 31st October, 2014.

Publications

'Competition Tracker -2013', a compendium of the Orders of CCI, containing the decisions given under Section 26(2), 26(6), 26(7), 27 and 31 (1) of the Competition Act, during the period from January - December 2013 has been published in two volumes which was released by the Hon'ble Finance Minister Shri Arun Jaitley.

Annual Report of the Commission for the year 2013-14 was published and the Ministry has placed the same on the Table of the Parliament.

Volume -10 of CCI quarterly Newsletter 'FAIR PLAY' focusing on 'Regulation of Combinations' was published.

As a part of the Advocacy Series, a Booklet on 'Provisions relating to Public Procurement' was published for the benefit of the stakeholders. A pamphlet on 'Overview of Competition Act' has been published in both English and Hindi.

Internship Programme

In order to familiarize students with competition law, the CCI conduct an internship program wherein students of law, economics, management, regulatory governance etc. get an opportunity to do research on various issues concerning competition law under the guidance of a mentor from the Commission. During the period 20 students have been trained under the internship programme.

ENGAGING WITH THE WORLD

A Memorandum of Understanding (MOU) regarding Cooperation in the Application of Competition Laws was signed on 1st December 2014 between Competition Commission of India (CCI) and Commissioner of Competition Bureau Canada (CB) on the sidelines of ICN Merger Workshop on 1 -2nd December, 2014 in New Delhi.

MOU signing ceremony with Competition Bureau Canada

Visits

- Mr. Ashok Chawla, Chairperson, participated in International Bar Association (IBA) Conference and Roundtable of Asian Enforcers during 20th -21st October 2014 in Tokyo, Japan.
- Mr. Daniel Ducore& Mr. Paul O Brien from US Federal Trade Commission and Ms. Patty Brink & Ms. Michelle Rindone from US Department of Justice shared their experiences on US agencies' procedures and structures for negotiating effective relief and assuring compliance with their orders with the Commission and officers of CCI on 3rd December 2014 at CCI.
- Chairperson, CCI participated in the OECD Competition Committee and its working party meeting during 15th -18th December 2014 in Paris, France.
- Mr. S.L.Bunker ,Member, CCI participated in the 2014 ICN Advocacy Strategies & Assessment during 6th -7th November 2014 in Port Louis, Mauritius

Capacity Building

In-House

➞Half day workshop on Reading and Analysis of Orders/Judgment was organized on 10th October 2014 for the officers of CCI.

➞Workshop in collaboration with Organization for Economic Cooperation and Development (OECD) on "Competition Assessment" was organized during 15th -16th October 2014 at 2014 for officers of CCI.

➞Sixth in-house induction training program was organized for officers joined by direct recruitment and on deputation during 29th- 31st October 2014 at CCI.

Out-side

➞2014 International Competition Network (ICN) Cartel Workshop during 1st -3rd October 2014 in Taipei, Taiwan.

➞Workshop on Competition Issues in Retail during 3rd - 5th December 2014 in Busan, Korea.

KNOW YOUR COMPETITION LAW

The Concept of Relevant Market under the Competition Act, 2002

The edifice of competition law rests upon dynamics of competition in one particular market. Benefits or harm to competition has to be assessed with respect to that market.

The definition of relevant market is an essential step in the analysis of most anti-trust cases. The concept of "Relevant Market" is used to define markets (both product and geographic) i.e. to identify the range of products and regions that pose a competitive constraint to the dominant undertaking's product or region in which its product is sold. The purpose of market definition is to identify the economic space in which a firm or combination of firms may be able to exercise market power. The products sold in the relevant market are usually considered as substitutes by the consumers. This analytical focus of product market definition (or geographical market definition) on the availability of substitutes is derived from the fact that it constrains the ability of a seller to charge *supra*-competitive prices.

In the Competition Act, 2002, the term used for such a market where the status of competition has to be evaluated is "relevant market". Unlike in some other foreign jurisdictions, the [Indian] Competition Act, 2002 not only gives a formula definition of "relevant market" but also specifies factors which have to be considered while determining that market. There is little scope for any arbitrariness or discretion in defining, determining and delineating the same under the Indian Competition Law.

The "relevant market" has been defined in section 2(r) of the Act meaning as the market which may be determined by the Commission with reference to the relevant product market or the relevant geographic market or with reference to both the markets.

"Relevant product market" has been defined in section 2(t) of the Act meaning as a market comprising all those products or services which are regarded as interchangeable or substitutable by the consumer, by reason of

characteristics of the products or services, their prices and intended use. To determine the 'relevant product market', the Commission is to have due regard to all or any of the following factors viz. physical characteristics or end-use of goods, price of goods or service, consumer preferences, exclusion of in-house production, existence of specialized producers and classification of industrial products.

Further, "relevant geographic market" has been defined in section 2(s) of the Act meaning as a market comprising the area in which the conditions of competition for supply of goods or provision of services or demand of goods or services are distinctly homogenous and can be distinguished from the conditions prevailing in the neighboring areas. To determine the 'relevant geographic market', the Commission is to have due regard to all or any of the following factors viz., regulatory trade barriers, local specification requirements, national procurement policies, adequate distribution facilities, transport costs, language, consumer preferences and need for secure or regular supplies or rapid after-sales services.

Once the relevant market is defined, the Commission proceeds to examine the dominance of the enterprise in such market before looking at the alleged abusive conduct.

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

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