



The Quarterly Newsletter of Competition Commission of India

Fair Play

VOLUME 16: JANUARY - MARCH 2016



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FROM THE DESK OF THE CHAIRPERSON



The Competition Act is an enactment which is at the crossroads of law and economics. While the framework and architecture is legal, it rests on the foundation of economic concepts. Economic analysis forms an integral part of modern antitrust analysis in all competition jurisdictions.

The debate on whether economic analysis is relevant or necessary in antitrust analysis is passe. The discussion today is focussed on how and to what extent to apply it to competition casework. Competition economists, the world over, have provided research and economic expertise in merger review and antitrust litigation. The move from per se infringements to the 'rule of reason' is rooted in economic analysis. India, being a relatively young jurisdiction, had the benefit of adopting and incorporating elements of evolved jurisprudence and the latest economic concepts like that of rule of reason, to come up with a modern competition law.

In this background, the Commission has decided to hold a National Conference on the Economics of Competition Law annually. The first such Conference was organized on 3rd and 4th March at New Delhi, which brought together experts, academicians, economists, competition law practitioners and students of competition law to deliberate on developing methodologies to detect and prove anti-competitive behaviour. The foundations of the Competition Act, 2002 (the Act) are based on important economic concepts of 'Relevant Market', 'Relevant Geographic Market', 'Relevant Product Market', economic power of the enterprise, dominance, countervailing buying power and dependence of consumers on the enterprise.

The Conference provided a platform for convergence of views on various aspects on application of economics to competition law. They were put forth in a logical and simple manner by the panellists and speakers and as a result non-economists and lawyers could understand and appreciate them.

On the lines of competition laws in several other jurisdictions, Indian Act prohibits anti-competitive agreements, abuse of dominant position and regulates merger and acquisition above the specified thresholds. Each of them requires a specific kind of economic analysis. Cartel requires identification of price parallelism, barriers to the new entrants in the market and a host of plus factors. The dominance enjoins an understanding of the dynamics of product market including availability of alternate products and relative advantage of the dominance to the economic development of the sector/market. The primacy of economic analysis in combinations stems from the fact that the firms are required to furnish all relevant data and economic analyses with details of the present and the projected market shares to establish that the combination does not cause appreciable adverse effect on competition in India.

Thus, although competition enforcement rests on a triad of institutional pillars based on legal statute, legal jurisprudence and the enforcement by the competition authority, the effective use of economic models and analyses form its cornerstone. The application of economics to competition law brings about greater precision and predictability in the law's enforcement. Economics can be useful in deciphering the symptoms of the disease which can then be cured with proper enforcement of the anti-trust law.

(Devender K. Sikri)

National Conference on Economics of Competition Law

The Competition Commission of India (the Commission) organized the first '*National Conference on Economics of Competition Law*' on March 3rd and 4th, 2016 at the India Habitat Centre, New Delhi. The conference was organized to bring together scholars, practitioners and experts working in the area of competition law from across the country to present papers and deliberate on various economic theories, tools and applications.

Many important stakeholders from the government, academia and econo-legal fraternity attended the conference. The distinguished attendees list includes Shri Jayant Sinha, Hon'ble Minister of State (Finance), Government of India, Shri Tapan Ray, Secretary, Ministry of Corporate Affairs (MCA), Government of India, Dr. T. C. A. Anant, Chief Statistician and Secretary, Ministry of Statistics and Programme Implementation, Government of India, Hon'ble Shri Rajeev Kher, Member, Competition Appellate Tribunal (COMPAT), members of the Commission's Eminent Personal Advisory Group and senior advocates from High courts and the Supreme Court of India. In addition many foreign and Indian delegates including policymakers, senior officers and Economic Advisers from various Ministries of the Government of India attended the conference. Delhi

School of Economics and Price-waterhouse Coopers were the Knowledge Partners for the Conference.

Shri Jayant Sinha, Hon'ble Minister of State (Finance), Government of India, in his inaugural address, stated that the government is pursuing a pro-poor economic policy. He highlighted that the role of market and its importance to achieve the pro-poor objectives of the government, deserves better understanding and appreciation. He urged the Commission to emulate global best practices for the enforcement of competition law.

Shri Tapan Ray, Secretary MCA in his address applauded the Commission for its achievements and stressed on the Commission crucial role in ensuring level playing field. He emphasized the importance of Commission's role in the context of ease of doing business, which the government has been pursuing as a mission. In his introductory remarks Shri D.K. Sikri Chairperson of the Commission highlighted the importance of economic analysis. He stressed that the 'Rule of Reason' approach for decisions necessitates rigorous economic analysis. Shri Augustine Peter, Member of the Commission in his welcome address highlighted the role of economists in enforcement in the competition law. He informed that 40% manpower in the

Commission belongs to economic stream to enable the detailed case analysis. The two-day Conference comprised of two Panel Discussions and six Technical Sessions, besides the Inaugural and the Valedictory Sessions. The Panel Discussions, chaired by Shri Augustine Peter, Member, of the Commission, and Dr. Ajit Ranade, Senior President and Chief Economist, Aditya Birla Group, focused on 'Role of Economics in Competition Law Enforcement' and 'Competition and Innovation' respectively. The Technical Sessions covered major topics in competition law enforcement viz. Economics of Cartels, Defining and Measuring Market Power, Economic Analysis in Merger Review, Emerging E-Commerce: Implications for Competition, Interface between Competition law and IPR. Brief details of the Panel Discussions and Technical Sessions are as under:

Panel Discussion on Role of Economics in Anti-trust:

As more and more competition authorities move from a *per se* approach to a *rule-of-reason* approach to enforcement of competition law, the role and use of economics is increasing. The Panel highlighted that the association between law and economics is at the core of antitrust. However, it is only since the 1970s that vigorous economic analysis was adopted by

the competition authorities like EC and US etc. It was discussed that India had a second mover advantage in enforcing competition law, providing us with the opportunities to use learnings of the more developed jurisdictions. The Panel highlighted that competition law enforcement in India has evolved on a much quicker pace as compared to other jurisdictions in their early years.

Panel discussion on Competition and Innovation:

The debate on the relationship between market structure and innovation remains unsettled. Competition law has an *ex post* role warranted by anti-competitive conduct of enterprises. It steps in when a dominant incumbent firm uses its market power to stifle innovation or to retard technological progress; when innovators get together to prevent competing technology; and when mergers between innovators adversely affect incentives to innovate. It is essential that robust enforcement principles are developed and the analytical frame works is designed to suit the specific situation in markets of developing economies.

The Panel deliberated on important interlinks between competition and innovation such as: which market structures promote innovation? What would be the appropriate response of the anti-trust regulator to innovation? Does one have to accept monopolies if they promote innovation? The Panel emphasized upon the fact that competition is not an end in itself but is a mean to

attain higher aggregate growth than the economy. If regulators subscribe to a dynamic view of competition, concentrated markets will have to be traded off for consumer benefit. It was further discussed that competition is not sufficient for innovation to occur. Innovators and innovative industry also needs free exit and not just the free entry.

Technical Session 1– 'Economics of Cartels'

Cartelization is considered harmful to the interests of consumers. Typically, when an industry that was earlier fairly competitive gets



Economic Conference on 03-04th March, 2016 in New Delhi.

cartelized, the equilibrium price in the market rises, and the equilibrium quantity traded in the market falls. Getting direct proof of cartelization is often difficult. Regulatory authorities rely on economic tools to help detect cartelization.

The first paper of the session discussed economic tools that may be used to detect cartels. The differences between direct and circumstantial evidence used for

cartel detection were discussed. Various screens, plus factors and super plus factors that are used for cartel detection were elucidated.

The second paper succinctly presented the econometric techniques that could be used to estimate damages arising out of a cartel. Cartels affect the markets in terms of reduced production and high prices. Cartels not only transfer consumer surplus from buyers to producers but also drive a group of consumers out of the market. The paper highlighted three major effects of cartelisation i.e.

price overcharge effect, pass-on effect and output effect.

Technical Session 2– 'Indian Experience of Cartels'

Cartelization is in violation of Section 3 of the Competition Act, 2002. The paper presented in the session looked into the detection of cartels using economic models, especially in cases, where markets are informal and sectors are not well defined as in case of India. It examined cartel dynamics, the

underlying historical antecedents to the prevalence of cartels, as well as the economic tools and methodologies currently being employed by competition authorities in different parts of the world to detect cartels.

Technical Session 3– 'Measuring Market Power'

To decide whether to allow a merger or to decide if there has been any anti-competitive conduct, such as an abuse of dominant position, a competition authority must first define the relevant market. Once the relevant market is defined, the authority must then determine market power. The techniques and methods used for these vary from case to case, and from industry to industry. The advent of new technologies puts forward new questions for competition authorities. For example, brick and mortar enterprises face competition from e-commerce, and from the growth of markets with network externalities in the e-commerce space. Relevant market and market power needs to be determined taking cognizance of such developments.

The first paper of this session used an empirical approach to further the understanding of delineation of relevant market in the hi-tech sector. The second paper explored whether new entrants should be protected when competition is opened up in protected sectors. The paper discussed about the effects of entry of new entrants and how their entry affects the dominant players and the existing prices in the market. The

paper concluded that the growth is driven by the protection of consumer welfare and the prices charged by the dominant firm are to be assessed with respect to its own cost structure.

The presentation from PwC focused on the various tools and techniques used for defining relevant market including the use of Regression analysis, SSNIP test, Price Correlation, Stationary test, Granger Causality test and Co-integration test.

Technical Session 4– 'Economics Analysis in Combination Regulation'

Indian law like several other jurisdictions enjoins the corporates to seek prior approval of mergers, in cases where the entities that are proposing to merge meet or exceed a certain minimum asset-turnover threshold. In merger regulation, economic analysis is used *inter alia* to define relevant market, determine market shares and market concentrations, and assess likely unilateral and coordinated effects. The first paper showcased a merger impact assessment for the Indian manufacturing sector. The paper, with descriptive analysis, examined the trends and patterns by calculating different ratios in merger analysis. Market shares across certain sectors, namely, automobiles, pharmaceuticals, food, machinery, tools and chemicals etc. were analysed. It is found that over the years there has been overall decline in concentration across the sectors under study except for chemicals and food sector.

The second paper showcased empirical analysis in which the author utilizes merger simulation technique to estimate the changes in market shares and price change post-merger for the Holcim-Lafarge case. It was recommended that merger simulation may be used as a complementary tool to the concentration indices analysis.

Technical Session 5– 'Implication of e-commerce on Competition'

The increasing use of the internet for commercial activities has thrown up new challenges for competition authorities. As more and more businesses move online, the changing dynamics in these two-sided markets needs to be analysed with the aim of assessing its impact on competition.

The first paper presented in the session used the theory of two-sided markets to examine whether the concerns arising in the case of e-commerce are anti-competitive or not. The paper concluded that it is a standard practice to put advertisements on search engine result pages and it enhances the quality of search results. The second paper presented an empirical analysis of temporal variations of online pricing in India. The paper made use of time-series analysis using the VAR model to address specific research questions.

Technical Session 6– 'Interface between Competition Law and IPR'

In this session the issues of standardisation and its affects competition were discussed. The

legal regimes governing competition and IPR have evolved separately and may appear to be at odds because IPR confers exclusive rights on its owners, whereas competition law is for keeping markets open and accessible. However, both serve the same goal of promoting innovation and dynamic efficiency - IPR by providing *ex-ante* incentive to innovate, and competition law by curbing anticompetitive exploitation of IPRs *ex-post*.

The first paper in this session analysed the dichotomy between intellectual property rights and competition law in India in order to de-mystify the monopoly myth. The issues of standardisation and how it affects the competition were highlighted. Standards have a necessary role in facilitating economies of scale. Different types of standards and principles of standard setting, Standard Essential Patents (SEPs) and FRAND (Fair, Reasonable and Non-Discriminatory) terms were discussed.

The second paper analysed evolving jurisprudence in India in the context

of standardization as an instrument to promote innovation versus restricting competition. The paper concluded that the competition and IP laws should not be seen to be in conflict, but rather as interdependent elements. As competition law tends to regulate and control the restrictive practices in the market, it also ensures efficient intellectual property system in the market. The comprehensive goal is to safeguard the incentive emanating from intellectual property protection while at the same time controlling the risks of an undue extension of legal exclusivity.

Valedictory Session

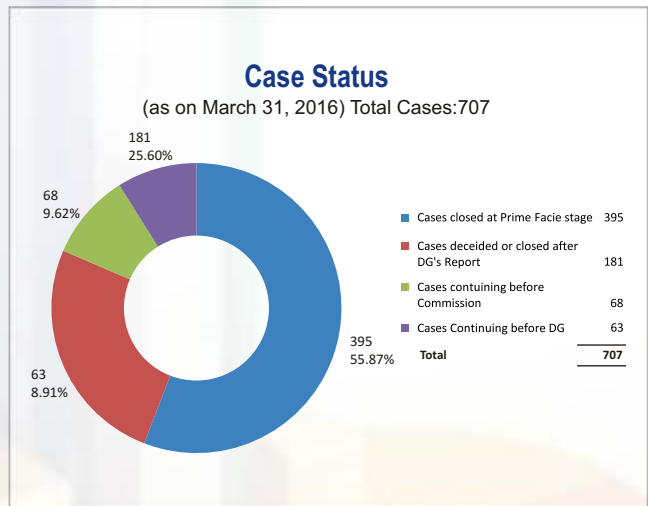
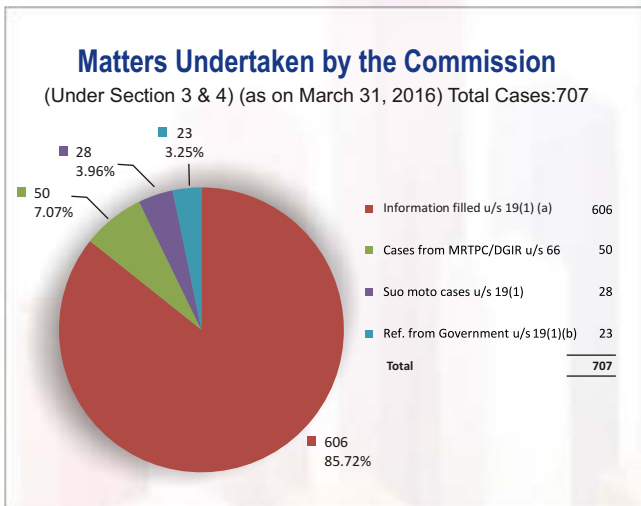
The Conference concluded with the Valedictory Session. Dr. T. C. A. Anant delivered the Valedictory Address. He mentioned that with greater reliance on markets, we need regulators for ensuring consumer welfare. Further he stated that competition law involves simple notions, but often it is difficult to put them in the appropriate framework. Rule of reason is an integral part of competition analysis and this underscores the role and use of

economics in the enforcement of competition law. Shri Rajiv Kher said that the emerging scenario of global free trade has necessitated signing up of trade agreements to provide an institutional framework to the international trade. This should be seen in the light of India's desire to be part of the global value chain. Shri Kher further mentioned that Commission's role is dynamic given that competition law is also dynamic. He applauded the idea of the economic conference.

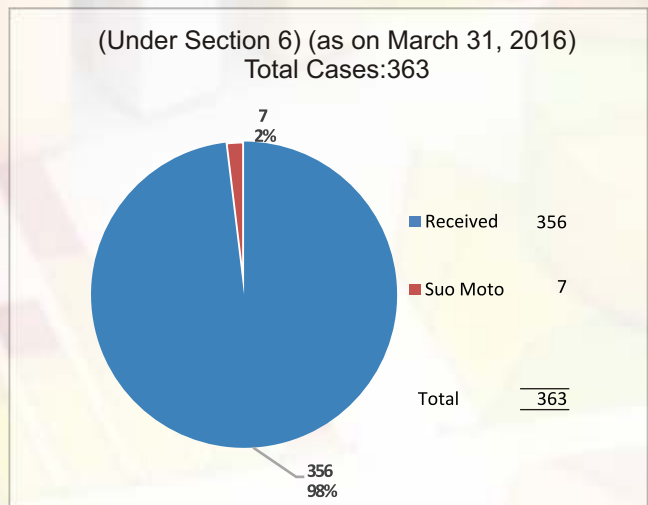
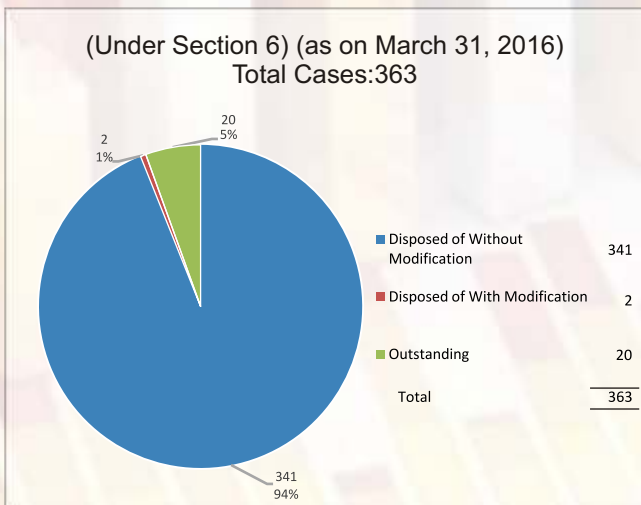
The valedictory session opened with welcome address by Ms. Jyoti Jindgar, Adviser, ATD-II. Shri. Kaushal Kishore, Adviser (Economics) summed up the deliberations of the conference and proposed the Vote of Thanks. The overwhelming and enthusiastic participation in the Conference underscores the necessity of holding such conference at regular intervals. Both the Hon'ble Minister of State (Finance) and the Chief Statistician of India suggested that the conference should be held every year.

FIGURES SPEAK

ANTI-TRUST CASES



COMBINATION CASES



SECTION 3 & 4 ORDERS

No Case of Abuse of Dominance against TAM Media Research Private Limited

In *Prasar Bharati (Broadcasting Corporation of India) Vs TAM Media Research Private Limited*, the Commission, *vide* its order dated 25th February 2016, found that TAM Media Research Private Limited (TAM) has not abused its dominant position in terms of the provisions of section 4 of the Competition Act, 2002 ("Act").

In the information, it was alleged by Prashar Bharati that TAM has abused its dominant position by deliberately shrinking the relevant market of television audience measurement services. It was also alleged that by not reflecting the viewing preferences of the rural market, TAM's actions have the consequence of the content produced being urban centric and

thereby denying the market to those who seek to cater to rural areas.

In the Director General's (DG) investigation, it is found that TAM is enjoying a position of strength in the relevant market of '*market for provision of services for audience measurement for channels and programs on television in India*' and its conduct is abusive in terms of the provisions of section 4 of the Act.

Association of Third Party Administrators vs. General Insurers' (Public Sector) Association of India (GIPSA) and others

In a recent judgment, the Commission absolved the GIPSA, Department of Financial Services ("DFS") and four Public Sector General Insurance Companies ("PSGICs") of the allegations raised by the association of third party administrators ("TPAs").

It was alleged in the information that GIPSA was formed by the PSGICs as a platform to further their own interests and allegedly to facilitate anti-competitive practices. The Informant was primarily aggrieved by the proposed formation of a captive TPA, i.e., Health Insurance TPA India Ltd. ('HITPA') by the PSGICs under the aegis of GIPSA. It was alleged that the formation of HITPA by the PSGICs was to foreclose the market for existing as well as potential TPAs planning to enter that market. Thus, the Informant alleged that the PSGICs, by collectively deciding to form HITPA, have acted in an anti-competitive manner.

Further, it was alleged that DFS, Ministry of Finance (one of the Opposite Parties) issued certain circulars with guidelines mandating anti-competitive agreements between the PSGICs.

On detailed investigation, the DG found that the decision of PSGICs to have a new TPA, which shall have no exclusive rights of their business, was a commercial decision aimed at improving the level of services. The investigation further concluded that the formation of new TPA jointly would not foreclose the market or lead to any appreciable adverse effect on competition. The Commission, after considering the matter, was of the view that HITPA, being a JV, cannot be *per se* held to be anti-competitive; and that its impact needs to be assessed on the touchstone of the factors laid down under section 19(3) of the Act.

Keeping in view the holistic picture, the Commission was of the view that the formation of HITPA by way of a JV by the PSGICs was a

commercial decision aimed at combating the inefficiencies and deteriorated services provided by the existing TPAs. The Commission further analysed the impact of the said Joint Venture, i.e., HITPA in terms of the provisions contained in section 19(3) of the Act and noted that the PSGICs have clarified that the existing TPAs would continue to remain on their panel and the newly formed HITPA would be one amongst other TPAs. Further, the choice of consumers largely based on the efficiency in services would be the sole criterion that would guide PSGICs in their choice of TPAs.

Thus, the Commission held that there was no issue of foreclosure as such for the existing TPAs or the new potential TPAs intending to enter the market. Further, the Commission observed that the impugned instructions, even though issued by DFS, were not followed by any of the PSGICs and so no contravention was found.

Tamil Nadu Power Producers Association (TNPPA) and Chettinad International Coal Terminal Pvt. Ltd. (CICTPL) and Kamarajar Port Limited (KPL)

The Commission *vide* its majority order dated 04.01.2016, directed investigation against CICTPL and KPL (collectively referred to as the 'Opposite Parties') in an information received from TNPPA for alleged abuse of dominant position by CICTPL. CICTPL is a special purpose vehicle floated by a consortium of South India Corporation Agencies, Portia Management Services and Navayuga Engineering. KPL, erstwhile the Ennore Port Limited, is a port situated on the Coromandel Coast which is about 20 km north of Chennai Port. CICTPL was selected, through open bid, to create the facility of common user coal terminal at Kamarajar Port on Build, Operate and Transfer (BOT) basis. It signed a Licence Agreement with KPL which allowed it to construct and operate the facility for a period of 30 years from the date of commencement of commercial operations.

The members of TNPPA were primarily aggrieved that pursuant to the ban imposed on Chennai Port

Trust (CHPT) by the Madras High Court (*vide* order dated 11.05.2011), CICTPL has become dominant and has abused its dominant position in terms of Section 4 of the Act. The Commission noted that for transportation of coal, shipping it through sea is an economical alternative as compared to transportation through land. Further, the commission noted that the members of the informant are located in and around Chennai and due to primary factors like location of power plants, cost effective transportation by sea, they source their coal requirement through CICTPL located at the Kamarajar port and as such the other ports were located as distant location not posing competitive constraints as such on CICTPL. Thus, the relevant market was defined as the market for 'the provision of coal terminal services in and around Kamarajar Port'. The Commission was *prima facie* of the view that CICTPL held a dominant position in the relevant market.

With regard to abuse, the

Commission was of the view that although the Opposite Parties denied the imposition of the liaisoning and coordination charge, it is implausible that such a charge was paid by the users to a third party without their knowledge. Thus, the Commission was, *prima facie*, satisfied that the conduct of the Opposite Parties contravenes Section 4(2)(a)(i) and 4(2)(d) of the Act, *i.e.*, imposition of unfair terms and conditions; and making the conclusion of contracts subject to acceptance by the other parties of supplementary obligations which, by their nature or according to commercial usage, have no nexus with the subject of such contracts.

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

Recently, Hon'ble Judicature of High Court at Madras was pleased to dismiss the Writ Petition (No. 7233/2016) filed by CICTPL challenging the *prima facie* order passed by the Commission.



SECTION 5 & 6 ORDERS

Combination between Anheuser-Busch InBev SA/NV and SABMiller approved

Anheuser-Busch InBev SA/NV ("**ABI**") and SABMiller plc ("**SABM**") jointly filed a notice on 10.12.2015 in relation to the acquisition of entire issued and to be issued share capital of SABM by ABI, pursuant to the execution of a Co-operation Agreement on 11.11.2015. The two companies are engaged in production, marketing and distribution of some global brands of beers in India like Budwiser, Budwiser Magnum, Grolsch, Miller Genuine Draft and Pilsner Urquell. The Commission noted that the

market for beer is distinguishable from that for other beverages such as wine and distilled spirits and the beer market may be further segmented in different ways such as, (i) by alcohol content (strong/regular); (ii) price (premium/standard etc.); and (iii) type (lager/ale) etc. Accordingly, for the assessment of the proposed combination, the Commission considered each of the sub-segments of the beer market and observed that the increment in the market share of ABI resulting from the proposed

combination is insignificant. Further, the Commission noted that the combined entity would continue to face competitive constraints on account of the presence of other competitors such as, United Breweries Limited (which is a market leader in all the segments/sub-segments of beer in India) and Carlsberg etc. Considering the facts on record and the details provided in the notice, the Commission approved the combination under sub-section (1) of Section 31 of the Act.

Combination between Virtusa Consulting Services Private Limited and Polaris Consulting & Services Limited approved

The Commission received a notice under sub-section (2) of Section 6 of the Act from Virtusa Consulting Services Private Limited ("**Acquirer**") for acquisition of a majority stake of 53% of the paid-up share capital of Polaris Consulting & Services Limited ("**Target**"). The Commission observed that the proposed combination relates to the IT Services sector and the parties are engaged in the business of providing IT Services which include IT & business consulting,

development of IT applications, etc. The Commission also observed that the IT Services sector has several other players such as Tata Consultancy Services, Cognizant, Infosys, Wipro and HCL Technologies which offer IT Services. It noted that the combined share of parties in the IT Services market in India constitutes less than 1%. The Acquirer as well as the Target are engaged in the business of providing IT Services, in view of the insignificant market shares of the

parties and the presence of larger players, the Commission observed that there does not seem to be a likelihood of appreciable adverse effect on competition in India. Also, it observed that no vertical relationships exist among the parties. Considering the facts on record and the details provided in the notice, the Commission approved the combination under sub-section (1) of Section 31 of the Act.

Combination between Reliance Communications Limited and Sistema Shyam Telservice Limited approved

On 1st December, 2015, the Commission received a notice under sub-section (2) of Section 6 of the Competition Act, 2002 ("Act") given by Reliance Communications Limited (RCom).

The proposed combination related to the demerger of the telecom business of Sistema Shyam Teleservices Limited ("Target" / "SSTL") and subsequent acquisition of the same by RCom pursuant to a Merger Agreement and Shareholders Agreement dated 2nd November 2015.

It was observed that the overlap in the operations of RCom and SSTL existed in nine telecom service areas in the mobile telephony service and one service area in case of wireline telephony service.

Regarding long distance services, it was noted that RCom offers both NLD as well as ILD services. On the other hand, SSTL's network for NLD services is currently used for captive purposes and it does not provide

ILD services. With regards to the passive infrastructure services, it was noted that none of the telecom towers of SSTL would be transferred to RCom as part of the proposed combination. With regards to the internet data centres, it was observed that while RCom renders internet data centre related services to others, SSTL's internet data centres are captively used.

On the basis of information furnished by the Acquirer, with regards to mobile telephony service, it was noted that while the market shares of RCom in the overlapping telecom service areas are in the range of 5-20 percent, post combination the combined market shares would remain in the same range and there are other significant service providers active in the provision of similar services. Regarding the wireline telephony services, it is observed that the combined market share of the Parties, post combination, would be in the range of 0-10 percent only and

there are other significant competitors active in the provision of similar services.

In relation to the vertical relationship, it was noted that SSTL had taken tower tenancies from Reliance Infratel Limited (RITL), a subsidiary of RCom and post-combination those tower tenancies of SSTL would become internal tenancies of RCom. In this regard, it had been submitted that there were around four lakh telecom towers in the country with average tenancy of around 2 i.e. total tenancy of more than 8 lakhs. In terms of tenancies, Indus towers is market leader (35-40 percent) followed by & ATC Towers (including Viom) (15-20 percent), RITL (10-15 percent), Bharti Infratel (10-15 percent), BSNL (5-10 percent) etc.

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



INVESTIGATIONS INITIATED

Investigation Initiated against Athletics Federation of India

The Commission *vide* its order dated 16th March, 2016 found that *prima facie* Athletics Federation of India (AFI) has acted in contravention of the provisions of section 4 of the Act and accordingly, directed the Director General (DG) to investigate into the matter.

The Commission initiated the case based on an information filed by Department of Sports, Ministry of Youth Affairs & Sports, Government of India alleging that AFI in its Annual General body meeting (AGM) held on 11-12 April, 2015, decided inter alia "to take action against the state units/ officials/ athletes and individuals who encourage the



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unauthorized marathons and become part of such marathons where AFI permission was not taken and it was made mandatory to seek permission of AFI before organizing any road race/marathon on national and international level", which is anti-competitive and such decision of AFI prevents development of the

sport of athletics in the country.

The Commission in its order dated 16th March, 2016 observed that in the relevant market of 'provision of services relating to organization of athletics/athletic activities in India', AFI is dominant and is trying to impose discriminatory conditions like mandatory permission for conducting national and international marathon meets and thereby, restricting the entry of new entrants into the relevant market. The Commission held that said conduct of AFI appears to be in contravention of the provisions of sections 4(2) (b) (i) and 4(2) (c) of the Act.

Alleged Abuse of dominance by Mahyco Monsanto Biotech Ltd. and its affiliates

The Commission received a reference from Ministry of Agriculture as well as information from three seed manufacturers, namely, Nuziveedu Seeds Ltd., PrabhatAgri Biotech Ltd. and Pravardhan Seeds Pvt. Ltd., alleging contraventions of the provisions of Section 3(4) and Section 4 of the Competition Act, 2002 ('Act') by Mahyco Monsanto Biotech Ltd (MMBL) and its affiliates namely MHPL and Maharashtra Hybrid Seed Co. Ltd. (Mahyco) in licensing of Bt Technology for cotton in India.



The allegations included: charging of unfair/excessive price for licensing technology in the name of trait value; imposition of unfair & discriminatory conditions in sub-license agreements; leveraging to protect position in the downstream cotton seeds market, where its affiliates operate; and limiting of scientific development in the

technology market.

In its preliminary assessment, the Commission defined market for provision of Bt cotton technology in India as the relevant market as BT cotton technology, by the virtue of its effectiveness and characteristics is distinct from the traditional methods of pest control used in cultivation of cotton. Further, the Commission was of the view that there also exists a downstream relevant market, *i.e.* market for "manufacture and sale of BT cotton seeds in India". It emerged

from the available facts that the fixation of trait value has been a matter of dispute and litigation over the years and some of the State Governments have fixed the trait value lower than what was being sought by MMBL.

It was observed that the sub license agreements with the informants were terminated on account on disputes related to trait value, while the same were sub-judice. The informants pointed out that as per the termination conditions they were, inter alia, required to immediately destroy the seeds, parent lines and germ plasm that are modified to contain Monsanto technology. The Commission felt while on the one hand, imposition of such terms would lead to ouster of the informants, on the other hand MMBL's group companies would stand to benefit, in the downstream market. With regards to the

allegations related to discriminations in terms of sub-license conditions, the Commission felt that the conduct needs to be examined as it had the potential to distort the level playing field in the market. Thus, the Commission found that the conduct of MMBL and its affiliates *prima facie* contravenes the provisions of Section 4 of the Act.

The sub-license agreements inter alia required the sub- licensees to intimate MMBL, within 30 days, development of any hybrid cotton seed on the basis of trait obtained from a competitor of MMBL. The Commission apprehended that such notification requirement coupled with the stringent termination conditions had the effect of foreclosing competition in the upstream Bt Cotton Technology market as they served as a major deterrent for the sub-licensees to

deal with the competitors of MMBL. The Commission further observed that these agreements *prima facie* are in the nature of refusal to deal and exclusive supply agreement within the meaning of Section 3(4) of the Act and the conditions did not appear to be necessary for protecting the Intellectual Property Rights of MMBL or its affiliates. The Commission, *vide* its majority order dated 10th February 2016, passed under Section 26 (1) of the Act, directed DG to carry out an investigation into the matter. Subsequently, the Commission received a reference from State of Telangana and information from All India Kissan Sabha (a farmer association) and National Seed Association of India, which were clubbed by the Commission, *vide* order dated 18th February 2016, with the earlier cases referred for investigation as they involved substantially same issues.



DEVELOPMENTS IN OTHER JURISDICTIONS

USA

The Federal Trade Commission announced revised thresholds under the Hart-Scott-Rodino Antitrust Improvements Act on 21 January 2016. The thresholds are as follows:

- + A buyer must, as a result of the transaction, hold voting securities or assets valued in excess of \$78.2 million (size of transaction test).
- + The acquired or acquiring person should have annual net sales or total assets of at least \$15.6 million, and the other person an annual net sales or total assets of \$156.3 million (size of person tests).
- + Transactions exceeding \$312.6 million are reportable even if the 'size of person test' is not met.

GERMANY

The German competition authority (Bundeskartellamt) has imposed a fine of €130,000 on LEGO GmbH for enforcing vertical resale price maintenance in the sale of approximately 20 "highlight articles". The authority noted that LEGO maintained a list of end consumer prices, and required the retailers to adhere to the same. Retailers who deviated from the

same were threatened with reduction or withholding of supply. These practices had affected retailers in northern and eastern Germany in 2012 and 2013. A reduced fine was finally levied by the authority as LEGO had cooperated with the investigation, made organisational and personnel changes, and agreed to the settlement of the case.

UNITED KINGDOM

The High Court (Chancery Division) passed a judgement in an abuse of dominance case concerning Google Maps. The issue before the Court was whether Google had abused its dominance in the market for online search and online search advertising, by displaying its maps near or at the top of search engine result pages, including a clickable image of the map, in response to geographic queries.

In coming to a decision the Court assumed that Google was dominant in the market for general market for general online search in the UK. The Court stated that the assumption would be reconsidered later, in case of a finding of abuse of dominance. Streetmap was required to establish that Google's conduct was reasonably likely to harm competition in that market and that effect was appreciable.

The Court found that Google's intention behind introduction of the new service was to improve its general search engine. On the issue of 'appreciability' of effect, the Court concluded that it was not reasonably likely that the introduction of the clickable image of the map, had a serious or appreciable effect on competition in the market for online mapping services. The Court concluded that Streetmap's decline was an outcome of competitive forces.

RUSSIA

Google has lost its appeal before the Moscow Arbitration Court, against the decision of FAS Russia with respect to the Android Mobile Operating System.

FAS Russia had found that Google's contract with handset manufacturers, required them to pre-install a number of services on the handsets, so as to be able to access the Google Play Store. It also found that the practice by Google was reducing access of competitors, and amounted to abuse of its dominant position.

Pursuant to the ruling, Google is required to amend its contracts with handset manufacturers and pay a fine of up to 15% of the 2014 revenue from the preloaded apps.

ADVOCACY INITIATIVES

Advocacy Initiatives with Central Government, State Governments and PSUs

- Dr. M. S. Sahoo, Member, had an Interactive Meeting with Chief Secretary, Maharashtra and other officers of the State Govt. in connection with competition advocacy in the State of Maharashtra on 11th January, 2016 in Mumbai.
- Shri Devender K. Sikri, Chairperson, and Dr. M.S. Sahoo, Member, had an interactive meeting with probationers of Indian Postal Services undergoing training in RAK National Postal Academy was held in CCI's Office on 11th March, 2016. Ms R. Bhama, Adviser (Law) gave a presentation on 'Overview of Competition Law' during the meeting.
- Dr. M.S. Sahoo, Member, had an interaction with Governor, RBI



Internship Programme during February, 2016

- on competition issues in the banking sector on 17th March, 2016 in Mumbai
- Dr. M.S. Sahoo, Member, had an interaction with Chairman, SEBI on competition Issues in securities markets on 18th March, 2016 in Mumbai.
- Shri Shiv Ram Bairwa, Joint Director (Law) took a half-a-day session on Competition Act during a Training programme of ONGC held in New Delhi on 06th January, 2016.

Advocacy Initiatives with Trade Associations and Institutions



An interactive meeting of Chairperson and Member (MSS) with probationers of Indian Postal Services

- Dr. M. S. Sahoo, Member, participated as Resource Person in two-day residential programme on securities market, at Indian Institute of Corporate Affairs campus, Manesar (Haryana) on 15th - 16th January, 2016
- Dr. M.S. Sahoo, Member, was the Chief Guest in the inaugural session of the International Management Conference on Business and Economy organized by Fortune Institute of International Business, New Delhi on 5th March, 2016.
- Dr. M.S. Sahoo, Member inaugurated a one-day workshop on "FEMA, Insolvency Code and Competition Law" as Chief

Guest held in ICSI - Centre For Corporate Governance, Research & Training, CBD Belapur, Navi Mumbai organised in their campus on

19th March, 2016.

- Dr. Kumkum Budgujar, JD (Law) delivered a talk on "Will e-commerce derail

competition?" in an annual conference of SOWL-India held on 06th February, 2016 at India Habitat Centre, Lodhi Road, New Delhi.

Advocacy Initiatives with Universities/Institutes

- Shri Devender K. Sikri, Chairperson, inaugurated and delivered inaugural address. in 3rd International Conference on Competition Regulation and Competitiveness organised by IIM Kashipur in partnership with 'Shaping Tomorrow' on 5th February, 2016 in New Delhi. Dr. M.S. Sahoo Member delivered the valedictory address in the conference. Sh. U.C. Nahta Member, Smt. Smita Jhingran Secretary and Sh. Anil Kumar Bhardwaj Adviser attended the conference.
- Shri P. K. Singh, Adviser (Law), participated as a Judge in the seventh edition of NLU Antitrust Law Moot Court Competition-2016, scheduled to



Mr. Devender K. Sikri, Chairperson, CCI addressing "Third International Conference on Competition Regulation & Competitiveness" at New Delhi

be held on 11th – 13th March, 2016 held in Jodhpur.

- Shri Nandan Kumar, Jt Director (Eco) made a presentation on Competition Law during the

Competition Law Programme of Chandrababhu Jain College of Higher Studies & School of Law, Narela, Delhi on 15th March, 2016.



Focused Group Discussion in collaboration with ICSI and CCGRT on 18th March, 2016 at Navi Mumbai.

- Two 'Focus Group Discussions' were held on 18th March 2016 at Centre for Corporate Governance, Research and Training, ICSI, CBD Belapur and SEBI headquarters at Bandra-Kurla Complex Mumbai respectively. Shri Surendra Kanstiya a practicing Company Secretary and Author of books on Competition co-ordinated the FGDs which were also attended by Shri Anil Kumar Bhardwaj Adviser (Economics) and Shri Sulabh Rastogi Assistant Director (Advocacy).

ENGAGING WITH THE WORLD

Officials of the Commission participated in various workshops/seminars meetings, some of which are as follows:

- i. One officer participated in 8th meeting of RCEP Working Group on Competition during 23 -26 February, 2016 at Singapore.
- ii. One officer participated as panel speaker and presented a paper on "HR, Recruitment and Knowledge Management" in an ICN Agency Effectiveness Workshop organised by the Competition Authority of Botswana in collaboration with two co-chairs viz. Swedish Competition Authority & Norwegian Competition Authority and African Competition Forum organised in Gaborone, Botswana during March 10-11, 2016.
- iii. Dr. M.S. Sahoo, Member participated as featured speaker in a Seminar on 'Problems with Global Antitrust



Mr. M. S. Sahoo, Member at Yale School of Management on 19-20th February, 2016 in Connecticut

HR CORNER

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| <p>i) Shri Ashok Chawla demitted the office of the Chairperson, CCI on 07.01.2016 on completion of his tenure.</p> <p>ii) Shri D.K. Sikri joined as the Chairperson, CCI on 11.01.2016.</p> <p>iii) Shri Anil Kumar Bhardwaj Adviser (Economics) and Shri Vijay Kumar Malhotra Deputy Director (CS) joined the</p> | <p>commission on deputation basis. Orders promoting two Asstt. Directors (CS) as Dy. Director (CS) and seven Office Managers as Asstt. Directors in CCI were issued.</p> <p>iv) Written Examination for direct recruitment against 26 posts was conducted in four Metropolitan cities (Delhi, Mumbai, Kolkata and Chennai) on 31.01.2016. The results of the written examinations were declared on 23.02.2016.</p> | <p>v) Amendment of Recruitment Rules in respect of the post of Private Secretary in CCI was issued vide Notification dated 14.01.2016 to upgrade the Grade Pay of the post from Rs.4200 to Rs.4600.</p> <p>vi) Review of Recruitment Rules of posts in CCI and DG's office was initiated with the constitution of a Committee of Officers, to be guided by a Committee of Members of the Commission. Two meetings of the Committee of Officers were held on 14.03.2016 and 28.03.2016.</p> |
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Farewell Ceremony of outgoing Chairperson Mr. Ashok Chawla

Start up India - Stand up India

Startup India is a flagship initiative of the Government of India, intended to build a strong eco-system for nurturing innovation and Startups in the country that will drive sustainable economic growth and generate large scale employment opportunities. The Government through this initiative aims to empower Startups to grow through innovation and design. On January 16, Prime Minister Narendra Modi unveiled an action plan for start-up enterprises in India that addresses all aspects of the Startup ecosystem. With this Action Plan the Government hopes to accelerate spreading of the Startup movement:

- a) From digital/ technology sector to a wide array of sectors including agriculture, manufacturing, social sector, healthcare, education, etc.; and
- b) From existing tier 1 cities to tier 2 and tier 3 cities including semi-urban and rural areas.

The Action Plan is divided across the following areas:

Simplification and Handholding

1. **Compliance Regime based on Self-Certification**-To reduce the regulatory burden on Startups thereby allowing them to focus on their core business and keep compliance cost low. The start-ups will adopt self-certification to reduce the regulatory liabilities. The self-certification will apply to laws including payment of gratuity, labour contract, provident fund management, water and air pollution acts.
2. **Startup India Hub**- To create a single point of contact for the entire Startup ecosystem and enable knowledge exchange and access to funding.
3. **Rolling-out of Mobile App and Portal**- To serve as the single platform for Startups for interacting with Government and Regulatory Institutions for all business needs and information exchange among various stakeholders
4. **Legal Support and Fast-tracking Patent Examination at Lower Costs**-To promote awareness and adoption of IPRs by Startups and facilitate them in protecting and commercializing the IPRs by providing access to high quality Intellectual Property services and resources, including fast-track examination of patent applications and rebate in fees.

5. **Relaxed Norms of Public Procurement for Startups**- To provide an equal platform to Startups (in the manufacturing sector) vis-à-vis the experienced entrepreneurs/ companies in public procurement
6. **Faster Exit for Startups**- To make it easier for Startups to wind up operations. If a start-up fails, the government will also assist the entrepreneurs to find suitable solutions for their problems. If they fail again, the government will provide an easy way out.

Funding Support and Incentives

1. **Providing Funding Support**- The government will develop a fund with an initial corpus of Rs 2,500 crore and a total corpus of Rs 10,000 crore over four years, to support upcoming start-up enterprises. A committee of private professionals selected from the start-up industry will manage the fund.
2. **Credit Guarantee Fund for Startups**- To catalyse entrepreneurship by providing credit to innovators across all sections of society. A National Credit Guarantee Trust Company (NCGTC) is being conceptualised with a budget of Rs 500 crore per year for the next four years to support the flow of funds to start-ups.
3. **Tax Exemption on Capital Gains**-To promote investments into Startups by mobilizing the capital gains arising from sale of capital assets.
4. **Tax Exemption to Startups for 3 years**-To promote the growth of Startups and address working capital requirements.

The Startup India- Stand up India programme puts thrust on Industry-Academia partnership. This partnership will enable taking innovative ideas/ products from research labs to the manufacturing benefitting the society. As part of this effort the government launched *Atal Innovation Mission (AIM) with Self-Employment and Talent Utilization (SETU) Program*. This mission will serve as a platform to promote Innovation hubs, Startup businesses and other self-employment activities particularly in technology driven areas. Similarly other initiatives like '**Building Innovation Centres at National Institutes**' will enable new culture of innovative incubators.

JUDICIAL PRONOUNCEMENTS

DIRECTOR GENERAL OF HEALTH SERVICES IS AN 'ENTERPRISE'

The COMPAT vide its order dated 01.03.2016 in Appeal No. 63/2014 recently held that Director General of Health Services ('DGHS') is an 'enterprise' under the Competition Act, 2002 ('Act'). The case related to the allegation before the Commission that DGHS notified fresh empanelment of private hospitals and revision of package rates applicable under Central Government Health Scheme ('CGHS') in Delhi wherein it prescribed different rates of reimbursement to the private hospitals based on their accreditation with National Accreditation Board for Hospitals and Healthcare Providers ('NABH') and did not spell out any rationale or logic behind the different rates of payment. The Commission had passed an order under S. 26(2) of the Act reasoning that the activities being performed by DGHS cannot be covered in the definition of 'enterprise' because it is not directly engaged in any economic and commercial activities. COMPAT held that the activities carried out could be covered within the definition of 'enterprise' because CGHS is not just a facilitative mechanism but it also provides healthcare facilities by itself in the out-patient departments. DGHS does not perform a function which can be termed as inalienable and it cannot be said to be performing a sovereign function. CGHS is an enterprise which provides healthcare services to the target group and in order to do so, in view of the constraints on its

capacity, it laterally complements its resources by empanelling hospitals which include private hospitals as well.

The order of the Commission was set aside. The matter was remitted to the Commission for reconsideration on whether a case is made out for investigation under Section 26(1) recognizing that DGHS is covered under the definition of 'enterprise' under Section 2(h) of the Act.

PUBLIC WORKS DEPARTMENT OF HARYANA IS AN 'ENTERPRISE'

The COMPAT vide its order dated 16.02.2016 in *Rajat Verma v. Haryana Public Works (B&R) Department* held that Haryana government Public Works Department ('PWD') is an 'enterprise' as per S. 2(h) of the Act. PWD had invited online bids for construction of approaches to 2 Lane Rail Over Bridge at Level crossing on Delhi Ambala Railway line crossing in the district of Karnal. It was alleged that PWD, being in a dominant position in execution of works of roads, buildings, bridges and other civil construction works in the state of Haryana, has abused its dominant position by incorporating unfair clauses in the bid document of the said tender. The Commission, vide majority order, observed that PWD cannot be construed as an 'enterprise' because it is not directly engaged in any economic and commercial activities and its role is limited to provide infrastructural facilities to the people without any commercial consideration. The COMPAT observed that in the execution of work relating to

construction of roads, bridges etc. the contractor may be a service provider qua the department but the beneficiary of these activities is undoubtedly the general public qua whom the department acts as a service provider. In other words, the PWD is a provider of service to the public and from that perspective it clearly falls within the ambit of the term 'enterprise'. The majority order of the Commission was set aside and the matter has been remanded to inquire if there was any prima facie case of abuse of dominant position.

M.P. PUBLIC WORKS DEPARTMENT IS AN 'ENTERPRISE'

In the case of *Prem Prakash v. Principal Secretary and others* also the COMPAT relied on its order in *Rajat Verma* case and held that Madhya Pradesh Public Works Department ('MPPWD') is an 'enterprise'. The Commission had passed an order under S. 26(2) in Case No. 50/2014 stating that MPPWD is not an enterprise. The order of the Commission was set aside and the matter was remanded back to the Commission to examine whether a prima facie case of abuse of dominant position is made out or not.

DELHI HIGH COURT RULES THAT CCI HAS JURISDICTION TO INVESTIGATE INTO ABUSE OF DOMINANCE BY ERICSSON IN LICENSING STANDARD ESSENTIAL PATENTS

Micromax Informatics Ltd and Intex Technologies (India) Ltd. approached the Commission alleging that Ericsson, which has a

large portfolio of Standard Essential Patents(SEP) in technologies used in mobile handsets and network stations, has abused its dominance. Being a holder of SEP, Ericsson has undertaken to offer its SEPs on Fair, Reasonable And Non-Discriminatory (FRAND) terms. The Commission passed directions under S.26(1) of the Act and these were challenged by Ericsson by filing writ petitions before the Delhi High Court alleging that it was beyond the jurisdiction of the Commission being an issue under Intellectual Property Rights (IPR). The Court dismissed the writ petitions stating that the Commission has jurisdiction to investigate into the matter¹.

The Court stated that the Act and Patents Act are special acts operating in their respective fields, however, the Patents Act would be a special act, *vis-à-vis*, the Act in so far as patents are concerned. If there are irreconcilable differences between the Patents Act and the Act in so far as anti-abuse provisions are concerned, the Patents Act being a special act shall prevail notwithstanding the provision of S. 60 of the Act. The Court was of the view that the remedies as provided under S.27 of the Act for abuse of dominant position are materially different from the remedy as available under S. 84 of the Patents Act. Thus, it may be open for a prospective licensee to approach the Controller of Patents for grant of compulsory licence in certain cases. The same is not inconsistent with the Commission passing an

appropriate order under Section 27 of the Act.

The Court noted that S. 84 of the Patents Act provides specific remedy to the person seeking relief, but the orders passed by the Commission are *in rem*. Therefore, whilst an agreement which imposes reasonable condition for protecting patent rights is permissible, an anti-competitive agreement which imposes unreasonable conditions would not be afforded the safe harbour of S. 3(5) of the Act and would fall foul of S. 3 of the Act. The question as to whether a condition imposed under the agreement is reasonable or not would be a matter which could only be decided by the Commission under the provisions of the Act. Neither the Controller of Patents discharging his functions in terms of the Patents Act, nor a Civil Court would have any jurisdiction to adjudicate whether an agreement falls foul of S. 3 of the Act. This is so because the Controller of Patents cannot exercise any powers which are not specifically conferred by the Patents Act and by virtue of S. 61 of the Act, the jurisdiction of Civil Courts to entertain any suit or proceedings in respect of any matter which the Commission or the COMPAT is empowered to determine, stands expressly excluded. There is no irreconcilable repugnancy or conflict between the Act and the Patents Act and, in absence of any irreconcilable conflict between the two legislations, the jurisdiction of the Commission to entertain complaints for abuse of dominance

in respect of Patent rights cannot be ousted.

The Court also held that proceedings under the Act before the Commission are not in the nature of a private *lis*. The object of the proceedings is to prevent and curb the practices which have an adverse effect on the competition in India. The scope of enquiry before Commission would obviously be limited to whether Ericsson has abused its dominant position and, if so found, Commission may issue orders as contemplated under Section 27 of the Act. The question whether there is any abuse of dominance is solely within the scope of the Act and a civil court cannot decide whether an enterprise has abused its dominant position and pass orders as are contemplated under S.27 of the Act. Merely because a set of facts pleaded in a suit may also be relevant for determination whether S. 4 of the Act has been violated, does not mean that a civil court would be adjudicating that issue. Further, merely because certain reliefs sought by Micromax and Intex before the Commission are also available in proceedings under the Patents Act also does not exclude the subject matter of the complaints from the scope of the Act. An abuse of dominant position under S. 4 of the Act is not a cause that can be made a subject matter of a suit or proceedings before a civil court.

¹Order available at http://lobis.nic.in/d_dir/dhc/VIB/judgement/30-03-2016/VIB30032016CW4642014.pdf

TRAINING PROGRAMMES

Capacity Building Events

1. One officer attended a "Workshop on Communication Skills" during 5th – 6th January 2016 at Institute of Secretarial Training & Management (ISTM).
2. Three officers participated in a training program on "Primers on Securities Market" at Indian Institute of Corporate Affairs (IICA) Campus, Manesar during 14th – 16th January, 2016
3. A Training on "Indian Accounting Standards" for CCI officers was organized at CCI in collaboration with Institute of Chartered Accountants of India (ICAI) during 18th – 21st January, 2016 in the after-noon of each of the three days.
4. One officer attended a public Seminar by Mr. Scott Jacobs on "Regulatory Impact Assessment for Improving Regulation in India" held on 21st January 2016 at NIPFP, New Delhi in collaboration with CUTS.

5. CCI organized an offsite workshop on Leadership & Team Building for Professional Officers of the Commission at Jaipur during 22nd – 24th January 2016.
6. 14th Distinguished Visitor



Dr. Rathin Roy delivering lecture under "Distinguished Visitors Knowledge Series"

- Knowledge Sharing Series (DVKS) lecture by Dr. Rathin Roy, Director, National Institute of Public Finance & Policy (NIPFP) on the subject 'India's Contemporary Fiscal Conundrums: Some Reflections' was held on February 03, 2016.
7. CCI organized an offsite workshop on Leadership & Team Building for Support officers of the Commission at

Jaipur during 12th – 14th February, 2016.

8. Two officers participated in a workshop on Forensic Accounting & Fraud prevention for Corporates and Regulators organized by Committee on Information Technology (CIT), Institute of Chartered Accountants of India (ICAI) on February 09, 2016 at The Stein Auditorium, India Habitat Centre.
9. One officer participated in a training on "XBRL Implementation in MCA21" during March 10 -11, 2016 under plan scheme Corporate Data Management of Ministry of Corporate Affairs, organized by IICA at India International Centre.
10. A training programme on Office Procedure, Establishment Rules, Fundamental & Supplementary Rules and TA Rules for the direct recruited officers of the Commission was organized at CCI on 11th March 2016.



CCI Officers during an Offsite Team Building Programme



CCI Officers during an Offsite Team Building Programme

KNOW YOUR COMPETITION LAW

NON COMPLIANCE WITH ORDERS OF THE COMMISSION

Chapter VI of the Competition Act, 2002 ('Act') deals with the penalties for non-compliance with *inter alia* orders, directions of the Competition Commission of India (the 'Commission') and also provides the provisions for compensation by the Competition Appellate Tribunal ('COMPAT') in case of contravention of orders of the Commission.

The Act provides, in S.42, that the Commission may cause an inquiry to be made into compliance of its orders or directions and if any person, without reasonable cause, fails to comply with its orders or directions issued under S.27, 28, 31, 32, 33, 42A and 43A of the Act, he shall be punishable with fine which may extend to Rs. 1 lakh for each day of non-compliance, subject to a maximum of Rs.10 crore. If any person does not comply with these orders or directions, or fails to pay the fine imposed under sub-section (2), without prejudice to any proceeding under section 39, he shall be punishable with imprisonment for a term which may extend to 3 years, or with fine which may extend to Rs. 25 crores or with both, as the Chief Metropolitan Magistrate, Delhi may deem fit. The Chief Metropolitan Magistrate, Delhi shall not take cognizance of any offence save on a complaint filed by the Commission or any of its officers authorized by it.

Under S. 42A any person can make an application to the COMPAT for an order for the recovery of compensation from any enterprise for any loss or damage shown to have been suffered, by such person as a result of the said enterprise violating directions issued by the Commission or contravening, without any reasonable ground, any decision or order of the Commission issued under S. 27, 28, 31, 32 and 33 or any condition or restriction subject to which any approval, sanction, direction or exemption in relation to any matter has been accorded, given, made or granted or delaying in carrying out such orders or directions of the Commission.

S. 43 penalises failure to comply with certain directions of the Commission and the Director General ('DG'). If any person fails to comply, without reasonable cause, with a direction given by (a) the Commission under S. 36(2) and S. 36(4); or (b) the DG while exercising powers under S. 41(2), such person shall be punishable with fine which may extend to Rs. 1 lakh for each day of failure subject to a maximum of Rs. 1 crore.

Penalty can also be imposed for non-furnishing of information/notice of combinations. Under S. 43A, if any person or enterprise fails to give notice to the Commission under S. 6(2), the Commission shall impose a penalty which may extend to 1% of the total turnover or the assets,

whichever is higher, of such a combination.

S. 44 states that any person, being a party to a combination, (a) makes a statement which is false in any material particular, or knowing it to be false; or (b) omits to state any material particular knowing it to be material, shall be liable to a penalty which shall not be less than Rs. 50 lakhs but which may extend to Rs. 1 crore.

S. 45 imposes penalty in relation to furnishing of information. If a person, furnishes or is required to furnish under the Act any particulars, documents or any information, (a) makes any statement or furnishes any document which he knows or has reason to believe to be false in any material particular; or (b) omits to state any material fact knowing it to be material; or (c) wilfully alters, suppresses or destroys any document which is required to be furnished as aforesaid, such person shall be punishable with fine which may extend to Rs. 1 crore. In addition, the Commission may also pass such other order as it deems fit.

S. 46 empowers the Commission to impose lesser penalty to certain persons if it is satisfied that any producer, seller, distributor, trader or service provider included in any cartel, which is alleged to have violated section 3, has made a full and true disclosure in respect of the alleged violations and such

disclosure is vital and made before the submission of investigation report to the Commission.

S. 48 relates to contravention by companies. It states that where a person committing contravention of any of the provisions of the Act is a company, every person who, at the time the contravention was committed, was in charge of, and was responsible to the company for the conduct of the business of the

company, as well as the company, shall be deemed to be guilty of the contravention and shall be liable to be proceeded against and punished accordingly. However such person shall not be liable to any punishment if he proves that the contravention was committed without his knowledge or that he had exercised all due diligence to prevent the commission of such contravention. S. 48 further provides where a contravention of any of the

provisions of the Act has been committed by a company and it is proved that the contravention has taken place with the consent or connivance of, or is attributable to any neglect on the part of, any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall also be deemed to be guilty of that contravention and shall be liable to be proceeded against and punished accordingly.

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For any query/comment/suggestion, please write to advocacy@cci.gov.in

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