

# Competition Law Bulletin



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## From the Editor's Desk...

Dear Reader,

Greetings.

Continuing with our efforts to keep you abreast will the latest developments in Competition, we bring forth this edition for you.

The merger control regulations under the Competition Act, 2002 (“Act”) are yet to be notified. The draft regulations, prepared by the Competition Commission of India (“CCI”) are reportedly under examination with the Ministry of Corporate Affairs, Government of India. Once notified, the Act would come into force in its entirety and we will have cohesive and modern competition legislation in place.

In another development, in a recent order, Bombay High Court on 31 March, 2010 dismissed the petition of Kingfisher Airlines against notice issued by CCI to investigate the reported alliance of Kingfisher Airlines with Jet Airways, reported last year.

The outcome of the ongoing inquiries by CCI is also expected to start the development of case law on this subject.

We eagerly await your feedback on the bulletin.

Yours truly,

**M M Sharma**  
Head - Competition Law & Policy  
Vaish Associates, Advocates  
mmsharma@vaishlaw.com

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For further details,  
please contact....

**Vinay Vaish**

vinay@vaishlaw.com

**Satwinder Singh**

satwinder@vaishlaw.com

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## INDIAN PERSPECTIVE

### Amir Khan approaches Bombay High Court against CCI

The CCI has issued a notice to Amir Khan Productions for forming a cartel (explicit agreements or implicit collusions between entities) of film producers against the multiplex owners and taking a decision of not screening movies at multiplexes. The issue is related to multiples owners demanding 50 per cent revenue of movies screened by them and the film producers opposing this vehemently. Amir has reportedly approached the Bombay High Court in this context; however, according to CCI the Court does not have the jurisdiction to entertain the matter and the show- cause notice could only be contested in CCI.



(Source: Manupatra's CompLR January-March, 2010 Section D News and Events)

### Media updates

(i) **Verdict on loan pre-payment penalty against Banks soon –** Director General (DG), CCI has reportedly concluded investigation on a complaint filed before CCI against private sector banks for charging between 2 to 5 per cent of the principal sum and/or lump sum on foreclosure of the loan by customers. The report has revealed that the practice of banks and finance companies to charge pre-payment penalties suppress competition in the home loan market by limiting the ability of borrowers to switch their loans to another lender. CCI had issued show cause notices to at least 15 banks, Indian Banks Association and the Reserve Bank of India (RBI) questioning the rationale of penalizing clients who opt foreclose there loans.

(Source: The Economic Times, February 20 & 24, 2010).

(ii) **Bombay High Court dismisses petition of Kingfisher against CCI notice.** – The Bombay High Court on March 31, 2010 dismissed Kingfisher Airlines application challenging a CCI's notice that sought to inquire into the carrier's alliance with Jet Airways. The CCI had ordered an inquiry in August last year after Kingfisher and Jet announced an alliance to rationalize their resources to reduced cost. CCI wanted to investigate into the alliance to ensure that the deal would not create a monopoly situation in the aviation industry. Kingfisher had approach the Court against the notice saying the Competition Act was amended after the alliance was formed.

(Source: The Economic Times, April 2, 2010)

(iii) **Delhi Discoms overcharge 90% users:** CCI- Investigation by DG, CCI has found that most of the electric meters put up by BSES and NDPL are “fast running”. CCI investigated the case based on a complaint filed in September, 2009. CCI has issued show cause notices to the Discoms after examining the report of the DG which found evidence against them for misusing their dominant position and entering into anti-competitive agreements. The investigation has revealed that the Discoms do not allow their customer to install meters of their choice thereby abusing their dominant market position. In Delhi, over 2.3 million users receive power supply from BSES, while NDPL supplies power to about 1 million users. Based on replies of the Discoms, the CCI will decide the course of action to be initiated against them.

(Source: The Economic Times, April 13, 2010)

### COMPAT decides more pending MRTP matters

Competition Appellate Tribunal (“COMPAT”) continues to decide the pending cases under the repealed MRTP Act. As per information received from the record keeping office of COMPAT, it had disposed of 374 cases till April 7, 2010 as under:

RTP cases	88
UTP cases	143
Compensation cases	143
MTP cases	NIL (04 pending)

## INTERNATIONAL NEWS

### USA - FTC announces changes lowering jurisdictional thresholds for pre-merger notification



On January 19 2010 the Federal Trade Commission (“FTC”) released the annual jurisdictional adjustments for pre-merger notification filings made pursuant to Section 7A of the Clayton Act (known as the Hart-Scott-Rodino Antitrust Improvements Act of 1976), as well as for Section 8 of the Clayton Act. The new thresholds for Hart-Scott-Rodino notification have become effective from February, 22, 2010 after publication in the Federal Register. Every year the FTC adjusts the Hart-Scott-Rodino jurisdictional threshold tests based on changes to the US gross national product for each fiscal year compared to the gross national product for the fiscal year ending September 30 2003. This year, due to the economic downturn, the thresholds have decreased. The threshold changes do not affect the amount of the applicable Hart-Scott-Rodino filing fees to be paid, but do affect the threshold levels applicable to each of the filing fees.

(Source: ILO Competition Newsletter- March 18, 2010)

N.B.- It may be noticed that the threshold amendments in US are revised every year and in 2010 the threshold limits for reporting proposed mergers and acquisitions are lower than those in 2009, e.g. threshold limit was 65.2 million US\$ in 2009 which has been revised to 63.4 million US\$ in 2010. The thresholds are determined on the basis of “transaction value” and not on the basis of turnover or assets.

### USA - FTC approves Panasonic-Sanyo merger



In November 2008, Panasonic and Sanyo jointly announced that Panasonic would acquire Sanyo at a price of approximately USD 8.87 billion. The proposed deal triggered pre merger filings in the major jurisdictions around the globe, and required the parities to obtain clearances from various antitrust agencies before consummating the deal.

The FTC for United States too has conditionally approved the \$9 billion merger of Panasonic Corp. and Sanyo Electronic Co. on the pretext that Sanyo must sell its portable Nickel Metal Hydride (NiMH) battery business, including a manufacturing plant in Japan.

(Source: Manupatra's CompLR January-March, 2010 Section D News and Events).

N.B.-In the last issue we had reported that the Chinese competition law authorities had conditionally approved the merger in China.

## EU - Investigation against Thomson Reuters for abuse of dominance

The European Antitrust Watchdog has begun a suo moto investigation against Thomson Reuters, a financial data provider, to find out whether it is abusing the rules of monopoly by locking customers into its services. The investigation will be of Thomson Reuters' practices in the area of real-time market data feeds, to figure out whether customers or competitors are stopped in any manner from translating Reuters Investment Codes (RICs) to the codes of other data feed suppliers into alternative identification codes (so-called "mapping") against the rules of Competition Law. RICs that assist in identifying financial instruments help in retrieval of information from Thomson Reuters real-time data feeds. Thomson Reuters might have a dominant position in the supply of real-time market data, such as stock market prices, and this position is being abused through contracts with consumers.



(Source: Manupatra's ComplR January-March, 2010 Section D News and Events)

## EU - EC Objecting takeover of Sun Microsystems by Oracle

An objection has been raised by the European Commission (EC) regarding Oracle, the world's biggest proprietary database company's takeover of Sun Microsystems, the leader in open-source software. A formal statement of objections was issued by the EC which stated that the takeover would damage competition in the database market by providing consumers with fewer choices and higher prices. Oracle opposed the statement of objection by saying that its position in the market reflects "a profound misunderstanding of both database competition and open source dynamics". "Mergers like this occur regularly and have not been prohibited by United States or European regulators in decades" Oracle said.



(Source: Manupatra's ComplR January-March, 2010 Section D News and Events)

## EU - Chemtura Corp. as whistleblower for heat stabilizer cartel

The European Commission imposed a Euro 173 million fine on 10 companies for their participation in a lengthy price-fixing scheme for heat stabilizers. The combined markets for tin stabilizers and ESBO/esters in the European Economic Area were worth about Euro 121 million at the time of the infringement of competition laws. The charges relate to tin stabilizers during the years 1987-2000, and to ESBO/ester heat stabilizers between 1991 and 2000. The whistleblower for this cartel was Chemtura Corp. and hence it was granted leniency and was not fined the Euro 20+ million fine it would otherwise have had to pay. The charges of price fixing, sharing customers, allocation of markets and exchanging sensitive commercial information were on 24 different business units or subsidiaries of 10 suppliers: AkzoNobel, Baerlocher, Ciba, Elements, the former Elf Aquitaine (now Arkema France), GEA, Chemson, Faci, Reagens and AC Treuhand. Fines on Arkema France, Baerlocher and Ciba were reduced 30 per cent, 20



per cent and 15 per cent, respectively, for cooperating with the Commission investigation.

(Source: Manupatra's ComplR January-March, 2010 Section D News and Events)

## EU - Microsoft resolves remaining anti-trust issues with EC



The EC resolved its remaining antitrust issues with Microsoft Corp. after Microsoft gave an assurance in the form of a settlement agreement to the EC that it would market rival browsers alongside its own internet explorer. This would ensure that the consumers have the choice in the

manner of the browser that they wish to use. This resulted in the Commission dropping antitrust charges against Microsoft after the software giant agreed to give Windows OS users a choice of up to 12 other Web browsers, including Mozilla Firefox, Google Chrome, Apple's Safari and Opera. To guarantee that the choice was given to the consumers, Microsoft will need to implement a ballot screen that lets users in Europe replace Internet Explorer with another browser, starting March 2010. The deal also means computer manufacturers will now be able to ship PCs in Europe that do not come pre-installed with IE and can support any other web browser.

(Source: Manupatra's ComplR January-March, 2010 Section D News and Events)

## CHINA - First anti cartel action against rice-noodle cartel

On March 30, 2010, China's National Development and Reform Commission ('NDRC') published its first public infringement decision under the Chinese Anti-Monopoly Law ('AML'), in which it imposed financial penalties on 21 members of a Rice Noodle Cartel for price-fixing. The NDRC is the Chinese competition authority tasked with enforcing the AML in relation to price-related anti-competition activities. The public infringement decision was imposed almost a year and a half after the coming into force of the AML in August 2008. Significantly, the NDRC decision also demonstrates the application of the leniency provisions under the AML. 12 members of the Cartel were issued with warnings only, escaping financial penalty for their co-operation with the NDRC's investigations. Interestingly, there have also been reports in the Chinese media of arrests made of executives involved in the Cartel. The infringement decision sends a strong message to businesses across the worlds which have, or which are contemplating, a presence in China: the Chinese authorities will not hesitate to take business to task for infringements of the AML.

(Source: Client update April 2010, competition & antitrust Rajah & Tann, LLP)

## NETHERLANDS - Expensive lessons in merger control

The Competition Authority of Netherlands in two separate cases has imposed a total fine of €1,302,000 on NPM Capital and Sibco. In the first case the authority discovered through media coverage that NPM Capital had neglected to notify its acquisition of shares in Buitenfood, a holding company of several frozen food companies. In the second case the long overdue filing by holding company Sibco and raw materials trading company Trafigura of joint control over ethanol trading company Alcotra.

(Source: ILO Competition Newsletter March 25, 2010).

## SOUTH AFRICA - Competition Tribunal finds SAA incentive scheme for travel agents anti-competitive

In a long-awaited decision the Competition Tribunal of South Africa has found that South African Airways' (SAA) incentive scheme for travel agents during the period from June 1 2001 to March 31 2005 had the effect of inducing travel agents not to deal with SAA's competitors. The tribunal found that the scheme had an anti-competitive effect on SAA's rivals, as it foreclosed them from the domestic airline travel market.

(Source: ILO Competition Newsletter April 01, 2010).

## NORWAY - Court upholds fine on trade association for encouraging price increases

In March 2010 the Oslo District Court passed a judgment upholding the Competition Authority's administrative fine of Nkr400,000 (approximately €50,000) against a trade association for bus charter operators. The trade association had, inter alia, prepared and distributed a model for calculating prices for bus chartering services. Certain elements of the model were filled out in advance, such as the price per kilometer and the prices for waiting periods, overnight services and daily driver allowances.



The fine may not seem substantial, but given that it represented double the annual turnover of the trade association, which was partly run during members' spare time, it had a significant effect on the association. The trade association tried, without success, to argue that the statements and actions in question represented private opinions and actions of its chairman and the editor of its newsletter, and were not put forward on behalf of the trade association. It further argued

that any restriction on competition had no appreciable effect, as the members of the trade association had a market share on a national basis of as little as 4% (although in some regions of Norway their market share was as high as 20%). This line of argument was rejected by the court, which described the matter as a serious infringement of competition law and refused to apply the notice on agreements of major importance to the case, referring to the fact that the measures in question had as their object the reduction of price competition in the market. The judgment is still open for appeal.

(Source: ILO Competition Newsletter April 22, 2010).

## UK - Largest fine on RBS for breaching Competition law



Britain's Office of Fair Trading ("OFT") ordered the Royal Bank of Scotland Group PLC to pay £ 28.59 million (\$ 42.8 million) as fine for colluding with Barclays PLC on loan pricing, in one of the largest UK fines against a single company and the largest for a bank. OFT was alerted by Barclays Bank, which won immunity for blowing the whistle that individuals in RBS's professional practices coverage team passed on confidential pricing information to counterparts at Barclays about two prospective loans, as well as general pricing information. The loans in question were to large professional - services firms, such as solicitors, accountancy and real estate companies, for which RBS and Barclays are the main providers, the OFT said. The breaches to competition law took place between October 2007 and early 2008, several months before the UK Government bailout that led to RBS being 84% owned by the state. The OFT opened the investigation in April 2008, after Barclays notified it in mid March of that year about alleged price collusion.

(Source: Wall Street Journal reported in www.livemint.com March 31, 2010 and www.theeconomictimes.com).



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### We may be contacted at:

#### DELHI

Flat Nos. 5-7  
10, Hailey Road,  
New Delhi - 110001, India  
Phone: +91-11-4249 2525  
Fax: +91-11-2332 0484  
delhi@vaishlaw.com

903, 9th Floor, Indraprakash Building  
21, Barakhamba Road,  
New Delhi - 110001, India  
Phone: +91-11-4249 2525  
Fax: +91-11-4352 3668  
ipitlaws@vaishlaw.com

#### MUMBAI

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

#### GURGAON

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

#### BANGALORE

Royal Arcade No. 6, 80 Ft. Road,  
Koramangala Industrial Area  
Bangalore - 560 095, India  
Phone: +91-80-4228 8501-02  
Fax: +91-80-4228 8503  
bangalore@vaishlaw.com

**Editor: M M Sharma**

**Editorial Team: Vinay Vaish, Satwinder Singh, Shruba Bhattacharya**