

Competition Law Bulletin

From the Editor's Desk...

Dear Reader,

Season's Greetings!

Competition Commission of India (CCI) celebrated its 4th Annual Day on the May 20, 2013 in a well attended function at New Delhi. The Hon'ble Finance Minister, Sh. P. Chidambaram stoke a note of caution against the tendency to favour Public Sector Enterprises, which creates an unlevel playing field and adversely affects competition. The Hon'ble Minister of State of Corporate Affairs, Sh. Sachin Pilot also lauded the efforts of CCI in detecting anti-competitive practices and on removing various distortions in the markets. Finally, the Chairman, CCI articulated a Vision Statement for the MISSION 2020 with an aim to establish a robust competitive environment.

In the field of international cooperation, CCI signed Memorandum of Understanding (MoU) with the Australian Competition and Consumer Commission (ACCC) on the June 3, 2013. The MoU provides for sharing information on significant developments in competition policy and enforcement developments in the respective jurisdictions. CCI for the first time will host the forthcoming 3rd BRICS International Competition Conference, scheduled to be held at New Delhi from November 20-22, 2013.

Recently, the Ministry of Civil Aviation (MoCA) proposes to set up an economic cell to monitor domestic airlines' pricing mechanism. MoCA has also roped CCI to take corrective action in the event of discrepancies in airfares.

CCI orders in the cases of Hockey India and Apple Inc. deserve a mention as an illustration of the in-depth economic analysis. State owned Food Corporation of India, Gujarat Gas and Coal India are already under CCI scanner for abusing their dominant position. On the other hand Oil Marketing Companies, Sugar Mills and Domestic Airlines are also facing investigation for alleged cartelization.

In what would be a setback for CCI, the Competition (Amendment) Bill, 2012 which was introduced in the Lower House of the Parliament (Lok Sabha) on December 10, 2012 is referred back to the Parliamentary Standing Committee on Finance for reconsideration as the proposals of enhancing the powers of the CCI including determining sector wise thresholds for merger & acquisitions, is facing stiff opposition by the industry bodies.

Happy reading!

Yours truly,



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INDIAN-PERSPECTIVE

SPECIAL FEATURE

CCI exonerates Hockey India for alleged abuse of dominant position

The Competition Commission of India ("CCI") by way of its order dated May 5, 2013 in the Case No. 73/2011 (*Dhanraj Pillay and Ors. v. M/s Hockey India*) has exonerated Hockey India ("HI") from the charges of indulging into anti-competitive practices and abuse of dominance under Section 3 and 4 of the Competition Act, 2002 ("Act") respectively.



Parties Involved

The Informant: The information was filed by six former Olympian and National Hockey Players (collectively referred as "Informants") alleging that HI is abusing its dominant position and indulged in various anti-competitive practices relating to the organization of World Series Hockey League ("WSH").

Hockey India (HI): HI is the national sports authority for hockey in India affiliated by the Indian Olympic Association ("IOA"), Asian Hockey Federation ("AFH") and International Hockey Federation ("FIH").

Indian Hockey Federation (IHF): IHF is a National Sports Federation for the sport of Hockey affiliated to Indian Olympic Association, but it is not affiliated to FIH or AHF. IHF is the co-organizer of World Series Hockey (WSH) League along with Nimbus Sport (Nimbus).

Facts of the Case

In December 2010, IHF and Nimbus announced the WSH followed by organizers entering into negotiations with players and signing them for the league. FIH notified regulations relating to sanctioned and unsanctioned events and communicated the same to all National Associations. HI adopted the regulations relating to unsanctioned events and accordingly modified its Code of Conduct (CoC) Agreement with players to include the clauses related to

disciplinary action such as disqualification from Indian National Team for any participation in unsanctioned events. The HI along with the FIH also announced the intention to introduce their league in 2013.

Allegations by Informant

- HI is misusing its regulatory powers by promoting its own Hockey League at exclusion of WSH, resulting in denial of market access to rivals in contravention to Section 4(2)(c) of the Act.
- HI is abusing its dominant position in conducting international events in India to enter into the market of conducting a domestic event in India, in contravention of Section 4(2)(e) of the Act.
- The CoC Agreement entered by HI with the players is an exclusive supply agreement and the restrictive conditions included there under, constitute a violation of Section 3(4) of the Act.

CCI after finding a *prima facie* view in the case directed Director General ("DG") to investigate the case. The Informant also filed an application under Section 33 of the Act for interim relief, which in turn was dismissed by CCI.

Director General's (Investigation) Report

The DG after conducting an in-depth investigation of various allegations made in the information and relying on international jurisprudence on the issue at hand, concluded that:

- Conduct of actions of HI constitute practices leading to denial of market access to new sport organizers, players, sponsors and broadcasters in contravention of Section 4(2)(c) of the Act.
- CoC Agreement entered by HI with the players is in contravention of Section 3(4) (b) of the Act as the agreement causes appreciable adverse effect on competition in India as it creates barriers to entry for new players into the relevant market and drives existing competitors out of the market with no benefits accruing to the players as a result of such restrictive conditions.

Issues and finding of the Commission

Issue 1: Whether CCI has jurisdiction over HI and FIH?

The Commission noted that the Act focuses on the functional aspects of an entity rather than institutional aspects. The scope of the definition on the institutional front has been kept broad enough to include virtually all the entities as it includes “person” as well as departments of the government. The nature of activity decides whether the entity is an enterprise for the purpose of the Act or not. The activities of “organizing events” are definitely economic activities as there is a revenue dimension to the organizational activities of sports federations.

After relying on the international jurisprudence, the provisions of the Act and a holistic consideration of all relevant factors, CCI held that the National Sports Federations do not have any immunity under the Act. CCI observed that FIH is a Swiss body governed by the laws of Switzerland. However, given the scope of definition of person contained under Section 2(l) and the extra territorial jurisdiction of the CCI under Section 32 of the Act, it has jurisdiction over FIH.

Issue 2: What is the relevant market (RM) in the present case?

CCI disagreed with the RM defined by DG. CCI observed that governing activities cannot be a part of market definition, but governing powers can be a source of dominance. CCI considered delineation of relevant market for analysis of allegations pertaining to foreclosure of market for hockey events to rival leagues from the viewpoint of the spectator i.e. the ultimate viewer of sport in accordance with the criteria laid down under the Act of characteristics, intended use and price. Considering the characteristics of hockey events, CCI observed that every sport has unique characteristics that lead to development of fan following, the end consumers of the event. The approach of defining RM narrowed to sports events within



a particular sport finds support from international cases decided on similar issues.

CCI concluded that the relevant product market, as regards the allegation of foreclosure of rival leagues is “*the market for organization of private professional hockey leagues in*

India”. CCI also observed that it is appropriate to define a RM in the context of the specific allegation more so where there are multitude of consumers as in the case of sports as pointed out earlier.

Issue 4: Whether HI holds a dominant position in the relevant market?

CCI observed that the most significant source of dominance is the regulatory powers of HI. HI has right to sanction/approve hockey events in India. HI regulatory role empowers it, along with FIH to create entry barriers for other leagues in the form of requiring rival leagues to obtain sanctions for their tournament and requiring players to obtain No Objection Certificate (NOC) from HI to participate in rival tournaments. CCI after considering the European case laws on the issue at hand and other factors under the Act observed that the HI is in a dominant position since it assumes the role of a regulator in the RM.

Issue 5: Whether HI has abused its dominant position?

CCI observed that WSH was a domestic event as per definition contained in FIH bye laws, but it was very clear that the sanction was to be given by the respective Continental Federations and FIH. Since, HI was not the sanctioning authority for such an event and hence cannot be faulted for refusing the sanction which was neither to be granted by HI nor asked to be granted from HI. CCI hold that the evidences are insufficient to conclude that HI has indeed acted against the players who participated in WSH and hence the allegation against HI/FIH for causing denial of market access under Section 4(2)(c) of the Act is not substantiated.

On the issue of restrictions on free movement of players through the CoC Agreement, CCI observed that the

relationship between HI and the players tantamount to a vertical relationship where HI and the players are at different stages of the production chain. The restrictive conditions in CoC agreement are inherent and proportionate to the objectives of HI and cannot be fouled on *per se* basis till there is any instance where these are applied in a disproportionate manner, for which there is no evidence at present.

Final Order

CCI after considering all the aspects relating to the case concluded that there is no contravention of Section 3(3) (b), 3(4), 4(2) (a), 4(2) (c) and 4(2) (e) of the Act. However, CCI observed that, HI economic power is enormous as a regulator. Virtually, there is no other competitor of HI. Therefore, it would be appropriate if HI were to put in place an effective internal control system to ensure that its regulatory powers are not used in any way in the process of considering and deciding on any matters relating to its commercial activities; and also set up a streamlined fair and transparent system of issuing NOCs to the players for participating in events organized by foreign teams/clubs.

(Source: CCI website, Order dated May 05, 2013)

Comment: In this case though CCI found HI to be dominant in the relevant market but did not find its conduct as abusive. While arriving at this decision, CCI relied heavily on the inherence proportionality test postulated in the Mecca Medina judgment of the ECJ. This test is found to be the appropriate approach to address competition issues in the sports sector.

CCI passes orders for closure of certain matters

CCI has passed orders in 223 cases of Information's filed under Section 3 and 4 of the Act and 22 cases of investigations transferred from the erstwhile Director General of Investigation & Registration (DGIR). The full texts of the said orders are duly displayed on CCI website www.cci.gov.in.



CCI approves fourteen more 'Combinations' within 30 days

Keeping its promise of fast track disposal of merger regulations, CCI has approved 14 more Combinations between April 2013 - July 2013, within 30 days from the date of filing of Notice under the Combination Regulations, 2011 holding in each case that the proposed 'Combination' was not likely to cause an appreciable adverse effect on competition in the relevant markets in India. Overall, since June, 2011 till date, CCI has approved 136 combinations. Full Text of the Orders can be viewed on the CCI website www.cci.gov.in.

Media Updates

Ministry of Civil Aviation & CCI to work together on regulating air fare



The Ministry of Civil Aviation (MoCA) will set up an economic cell to monitor domestic airlines' pricing

mechanism. MoCA has also roped CCI to take corrective action in the event of discrepancies in airfares. The economic cell would analyse data on tickets sold by airlines under different price buckets and make the information public to bring in transparency in airfare pricing. In case there are discrepancies, it would be referred to CCI. MoCA would access data on all the tickets sold by different carriers under various price brackets and then analyse the data to give an indication of exactly how many tickets were sold under each price slab. The monitoring cell will help keep in check random increases in fares and predatory pricing in the aviation industry by making it mandatory for airlines to disclose data on fuel charge and taxes being levied on tickets.

(Source: Business Standard, New Delhi July 25, 2013).

Gujarat Gas under CCI scanner

CCI has launched an investigation into alleged abuse of dominance by Gujarat Gas Company. The CCI probe

follows a complaint by the Global Glass Maker Saint Gobain which alleges that its gas supply agreement (GSA) with Gujarat Gas contains unfair and discriminatory clauses. Based on the CCI order, Saint Gobain has complained against a long-term contract, absence of an exit clause, a minimum guarantee off take liability and right of first refusal in its agreement with Gujarat Gas. Further, the GSA was for seven years initially, but was changed to twelve and the exit clause deleted. A long-term agreement reduces, if not eliminates, the ability of a customer to choose its supplier.

(Source: *The Economic Times*, New Delhi, July 23, 2013)

Food Corporation of India's procurement policy under CCI scanner

CCI has ordered investigation into whether FCI is abusing its dominant position. On various recommendations, CCI has started examining the food procurement policy, which has driven out private players from the market. FCI has been criticized for its procurement and storage policies.

(Source: *The Times of India*, June 20, 2013)



CCI investigating Airlines for fuel surcharge price fixing

Express Industry Council of India filed an Information with CCI alleging five airline companies for indulging into cartelization by charging a uniform fuel surcharge on air cargo. The airline companies include Jet Airways, SpiceJet, Air India, GoAir and Indigo. CCI has directed an investigation in to the matter.

(Source: *Business Standard*, New Delhi June 12, 2013).



Cement Manufacturers to deposit 10 % of the penalty imposed by CCI

COMPAT has stayed the ₹ 6,307 crore penalties imposed by CCI against various cement companies. However, COMPAT has directed the companies and the Cement Manufacturer's Association to deposit 10% of the penalty amount within one month, failing which the appeal shall

be dismissed. Cement Companies moved to Supreme Court against the order of COMPAT which in turn was rejected by SC.

(Source: *The Moneycontrol.com*, June 12, 2013)

CCI launches investigation against Paradip Port's Stevedores

On information filed by group of exporters and importers, CCI has initiated an investigation into allegations of the operation of a cartel by some stevedores at Paradip Port (Odisha). Informant alleged that any stevedoring firm undertaking operations at Paradip Port has to draw labor from the pool, whose management rests with a body headed by the port's traffic manager with six representatives, three each from the cartel and the labor unions.

(Source: *The Hindu Business Line*, June 10, 2013)

MOU between CCI and Australian Competition and Consumer Commission



On June 3, 2013, CCI and Australian Competition and Consumer Commission (ACCC) signed a Memorandum of Understanding (MOU) on Cooperation at Canberra,

Australia. The MOU was signed by Mr. Ashok Chawla, Chairperson, CCI and Mr. Rod Sims, Chairman, ACCC. The MOU provides for sharing information on significant developments in competition policy and enforcement developments in the respective jurisdictions.

(Source: *Press Information Bureau*, June 5, 2013)

Oil Marketing Companies and 17 sugar mills under CCI scanner

CCI has ordered investigation into the alleged cartelization in the sugar industry for quoting prices in the tenders for supply of ethanol to oil marketing companies. CCI has found prima facie evidence of sugar mills collectively deciding to fix price of ethanol for the supply to the oil marketing companies. The probe has been



initiated against three trade associations, three oil marketing companies and 17 sugar mills. They include Indian Sugar Mills Association, Ethanol Manufacturers Association of India, National Federation of Cooperative Sugar Factories, HPCL, BPCL and IOCL.

(Source: *The Hindu*, New Delhi, June 5, 2013)

IATA under CCI scanner for alleged anti-competitive practices

CCI is investigating International Air Transport Association and its Indian subsidiary for indulging into anti-competitive practices with regard to air cargo transportation services. CCI in its prima facie order observed that the decisions/ resolution prescribing the rate of commission to be paid to the intermediaries or similar other decisions pertaining to prices/charges were in contravention of Section 3(3) of the Act.

(Source: *The Economic Times*, New Delhi, May 13, 2013)



CCI exonerates companies alleged in soda ash cartel case

On April 16, 2013, CCI exonerated several manufacturers of soda ash, including Tata Chemicals Limited, DCW Limited, M/s Gujarat Heavy Chemicals Limited, Nirma Limited and Saurashtra Chemical Limited from allegations of cartelization in the market for the manufacture and sale of soda ash in India. It was alleged that firms under the aegis of Alkali Manufacturers Association of India had formed a cartel to manipulate prices and volume of production of soda ash. CCI observed that there is no sufficient evidence to show that these soda ash makers indulged in bid rigging or collusive bidding or concerted practice to fix the sale price of soda ash, among others, that violated Section 3 of the Act.

(Source: *Economic Times*, May 1, 2013)



COMPAT affirms explosives cartel but reduces fine to ₹ 5.8 cr

On April 18, 2013, the Competition Appellate Tribunal (COMPAT) rejected an appeal against the decision of the Competition Commission of India (CCI) against ten explosive manufacturers in *Coal India Limited v GOCL Hyderabad & Others*. COMPAT has reduced the penalty to 10 per cent of total fine imposed by the CCI due to the presence of mitigating circumstances in the case. In April 2012, CCI unanimously fined 10 manufacturers around ₹ 60 crore for violating the Act under Section 3(3) (b) (cartels attempting to limit or control supply) and 3(3) (d) (directly or indirectly rigging bids in auctions).

(Source: *The Hindu Business Line*, April 18, 2013)

CCI investigating Ruchi Soya and Betul Oil for alleged cartelization



CCI after forming a *prima facie* view in the possibility of cartelization in trade of Gaur Gum has referred the matter for investigation to DG. Gaur Gum is one of India's largest exported agricultural commodities, which finds its use in oil and gas industry.

(Source: *The Economic Times*, Apr 10, 2013)

COMPAT DECIDES PENDING MRTP MATTERS

COMPAT continues to decide the pending cases under the repealed MRTP Act. As per information received from the COMPAT, it had disposed of 2074 cases till June 30, 2013, as per details below:

RTP cases	314
UTP cases	985
Compensation cases	766
MTP cases	09

INTERNATIONAL NEWS

European Union

EC fines producers of wire harnesses € 141 million in cartel settlement

EC has fined the car parts suppliers Sumitomo, Yazaki, Furukawa, S-Y Systems Technologies (SYS) and Leoni a

total of € 141 million for operating five cartels for the supply of wire harnesses to Toyota, Honda, Nissan and Renault. Wire harnesses conduct electricity in cars, for instance to start the motor, to open the window or to switch the air-conditioner on. Sumitomo was not fined for any of the five cartels as it benefited from immunity under the EU Leniency Program. The companies coordinated the prices and allocation of supplies of wire harnesses to the respective car manufacturers. Moreover, under the Commission's 2008 Settlement Notice, the Commission reduced the fines imposed by 10% as the companies concerned acknowledged their participation in the cartel and their liability in this respect. It is the seventh settlement decision since the introduction of the settlement procedure for cartels in June 2008.




(Source: European Commission: Press Release dated July 10, 2013)


EC sends Statement of Objections to number of companies

- Austrian waste management markets:** EC has informed Altstoff Recycling Austria AG ("ARA") of its preliminary view that ARA may have abused its dominant position on the markets for the management of packaging waste (mainly packaging made of plastic and metal) in Austria by hindering competitors to enter or expand on these markets. The Commission has concerns that ARA may have hindered competitors from accessing the household collection infrastructure.
 
- Top 13 investment banks:** EC has informed some of the world's largest investment banks of its preliminary conclusion that they may have infringed EU antitrust rules that prohibit anti-competitive agreements by colluding to prevent exchanges from
 

entering the credit derivatives business between 2006 and 2009. The statement of objections is addressed to Bank of America Merrill Lynch, Barclays, Bear Stearns, BNP Paribas, Citigroup, Credit Suisse, Deutsche Bank, Goldman Sachs, HSBC, JP Morgan, Morgan Stanley, Royal Bank of Scotland, UBS as well as the International Swaps and Derivatives Association (ISDA) and data service provider Markit. EC took the preliminary view that the banks acted collectively to shut out exchanges from the market because they feared that exchange trading would have reduced their revenues from acting as intermediaries in the OTC market.

(Source: European Commission: Press Release dated July 1, 2013)

- Motorola Mobility:** EC informed Motorola Mobility of its preliminary view that the company's seeking and enforcing of an injunction against Apple in Germany on the basis of its mobile phone standard-essential patents ("SEPs") may amount to an abuse of a dominant position.
 

- Romanian Power Exchange OPCOM:** EC has informed OPCOM S.A. and its parent company CNTEE Transelectrica S.A. of its objections regarding OPCOM's business practice of requiring OPCOM's electricity spot market participants to hold a Romanian VAT registration. The Commission took the preliminary view that OPCOM, the operator of the only power exchange in Romania, is discriminating against companies on the basis of their nationality/place of establishment, in breach of EU antitrust rules.
 

- Participants in smart card chips cartel:** EC has informed a number of suppliers of smart card chips of its preliminary view that they may have participated in a cartel, in breach of EU Competition rules.

(Source: European Commission: Press Release dated April 23, May 06, and May 30, July 18, 2013)

EC fines Lundbeck and other pharma companies for delaying market entry of generic medicines

Days after the U.S. Supreme Court ruled that U.S. antitrust enforcers can pursue "pay for delay" cases in the pharmaceutical industry; the European Commission ("EC") on June 19, 2013, fined nine drug makers, including Denmark's Lundbeck and India's Ranbaxy a total of 146 million euros (INR 1100 crore) for blocking the supply of a cheaper anti-depressant (generic version) to the market. In 2002, Lundbeck agreed with each of these companies to delay the market entry of cheaper generic versions of Lundbeck's branded citalopram, a blockbuster anti-depressant. It is the first fine issued in a reverse-payment case under European law.

(Source: European Commission: Press Release dated June 19, 2013)

EC accepts commitments from Star Alliance members Air Canada, United and Lufthansa

EC has accepted commitments offered by Air Canada, United and Lufthansa to address the Commission's concerns that the parties' cooperation under a revenue-sharing joint venture may be in breach of EU competition rules and harm premium passengers on the Frankfurt-New York route. Premium passengers are passengers travelling in the first, business and flexible economy classes. In order to address these concerns, the parties offered to make slots available at Frankfurt and New York airports and to enter into agreements with competitors, allowing them to offer more attractive services.

(Source: European Commission: Press Release dated May 23, 2013)



Legal advice given by a law firm or a decision of a national competition authority is no defense under EU Competition Law



In 1994 the Austrian Freight Forwarding Agents Consolidated Consignment Conference (SSK) was conditionally approved by the Austrian Cartel Court (Kartellgericht). By a decision in 1996, the Kartellgericht declared that the SSK was a minor cartel within the meaning of Austrian law. An Austrian law firm specializing in competition law, which was consulted as an adviser, also took the view that the SSK constituted a minor cartel and was therefore not prohibited. On October 11, 2007, EC made unannounced visits to the business premises of various suppliers of international freight forwarding services. The Higher Regional Court, Vienna, held that there was no fault on the part of the undertakings in question by agreeing on prices in reliance upon an order of the Kartellgericht declaring that their agreement constituted a minor cartel. The Austrian Supreme Court decided when the case was brought before it, to refer two questions to the Court of Justice (ECJ) for a preliminary ruling. The ECJ has been asked, first of all, whether a company which has infringed EU competition law may escape imposition of a fine where the infringement has resulted from that undertaking erring as to the lawfulness of its conduct on account of the terms of legal advice given by a lawyer or of the terms of a decision of a national competition authority. The second question that the Court has been asked is whether, where a company participates in a leniency program, the national competition authorities may, whilst finding an infringement of competition law, refrain from imposing a fine upon it. ECJ on June 18, 2013, held that that SSK couldn't avoid antitrust punishment by claiming they had relied on legal advice from a law firm or a national competition court that their joint pricing efforts didn't violate EU competition law.

(Source: European Commission: Press Release dated June 18, 2013)

EC has conducted dawn raids on suspected cartelization and Abuse of Dominant Position:

- Telecom Companies:** On July 11, 2013, EC conducted dawn raids at the premises of a number of telecommunications companies including Deutsche Telekom AG, Orange SA and Telefonica SA which are active in the provision of Internet connectivity in several Member States. The investigation is into the abuse of dominant position by telecom companies in the context of interconnection of Internet backbone grids.



- Cargo train transport services:** On June 18, 2013, the EC conducted dawn raids at the premises of several companies active in the sector of cargo train transport services to South Eastern Europe. Inspections took place in several Member States. The Commission has reasons to believe that the companies concerned may have violated Article 101 of the TFEU, which prohibits anticompetitive practices such as price fixing and customer allocation.



- Oil and bio-fuels sectors:** On May 14, 2013, the EC conducted dawn raids on three of the world's largest oil companies on suspicion that they engaged in price fixing and price distortion in the oil and biofuel industries. In allegations reminiscent of the recent LIBOR scandal, the EC alleges that Shell, BP and Statoil colluded to submit 'distorted prices' to price reporting agency Platts. Platts sets the benchmark price for oil and biofuel commodities by using data provided to them by oil companies, banks and private investment companies. The benchmark price is heavily influential in the trading of oil both in the physical and financial derivatives markets.



- Sugar Sector:** On April 23, 2013, the EC conducted dawn raids at the premises of companies active in the sugar industry in several EU Member States. The inspections relate to the supply of white sugar. The Commission has reasons to believe that the companies concerned may have violated EU competition rules that prohibit cartels and restrictive business practices.



(Source: European Commission: Press Release dated July 11, June 19, May 15 and May 14, 2013)

Others

Austria : Cartel Court has fined grocery company Rewe €20.8 million for vertical price fixing



On May 13, 2013, the Austrian Cartel Court, following an application by the Austrian Federal Competition Authority (Bundswettbewerbsbehörde (BWB)), fined the grocery retailer Rewe EUR20.8 million for agreeing retail prices with suppliers between 2007 and 2012. This antitrust fine has been the second highest in Austria's history.

(Source: The Austrian Times dated May 14, 2013)

Canada: The Ontario Superior Court of Justice fined Japanese automotive parts maker Yazaki C\$30 million



Following an investigation by the Canadian Competition Bureau, Yazaki was fined \$30 million by the Ontario Superior Court of Justice for its participation in a bid-rigging conspiracy. Yazaki secretly conspired with other Japanese motor vehicle components manufacturers to submit bids or tenders in response to requests for quotations to supply Honda of Canada Manufacturing Inc. (Honda) and Toyota Motor Manufacturing Canada Inc. (Toyota) with motor vehicle components. This is the largest fine ordered by a court in Canada for a bid-rigging offence.

(Source: Canadian Competition Bureau: Press Release dated April 18, 2013).

France

France's Competition Authority has fined four transport companies €79 million for cartelization

Autorité de la concurrence issued a decision whereby it fined a cartel between Brenntag, Caldic Est, Univar and Solvadis, a total amount of €79 million. The anti-competitive agreement



between these distributors of commodity chemicals restricted competition by allocating customers among the parties and coordinating prices. The undertakings concerned total more than 80% of the commodity chemicals distribution market in France. Solvadis, which had applied for leniency, was granted immunity from penalty; it would otherwise have been liable to a fine of €13 million.

(Source: France's Competition Authority: Press Release dated May 29, 2013)

Sanofi-Aventis fined for disparaging the generic versions of Plavix

Following a complaint from the Teva Santé (3rd largest manufacturer of generic medicine in France), the Autorité de la concurrence



financed Sanofi-Aventis a total of €40.6 million for abusing its dominant position by implementing a denigration strategy. This strategy was aimed for healthcare professionals (doctors and dispensary pharmacists) and against generic versions of Plavix, with a goal to limit their entry in the market and favour Sanofi-Aventis' own products and its generic version marketed by Sanofi-Aventis, Clopidogrel Winthrop.

(Source: France's Competition Authority: Press Release dated May 14, 2013)

Italy: Telecom Italia fined for market abuse

Telecom Italia has been fined more than €103 million for abusing its dominant market position as owner and manager of the country's fixed-line telephone network less than a year after the company pledged commitments to



end a separate monopolization probe.

Telecom Italia had hindered the expansion of other licensed operators (OLOs) competing with its own downstream operations as a result of:

- engaging in a selective discount policy (margin squeeze) in the market for retail access to the public telephone network, and
- a technical boycott of rivals of its wholesale broadband service through an unjustified number of refusals of requests to access Telecom Italia's network.

(Source: Italian Competition Authority: Press Release dated May 10, 2013)

Japan: Fair Trade Commission fines bearing companies \$142M for price-fixing



JFTC fined NTN Corp. and other bearing manufacturers 13.4 billion yen (\$142 million) for violating the Japan's Antimonopoly Act, to fix prices for both automotive and industrial machinery bearings. NTN, NSK Ltd., Nachi-Fujikoshi Corp. and

JTEKT Corp. collectively agreed to raise prices for industrial machine bearings to a level where the heightened costs for steel, bearings' raw material, would be passed on to consumers by asking purchasers to raise their selling price by 8 percent for general bearings and 10 percent for large-size bearings.

(Source: JFTC Press Release dated March 29, 2013).

Pakistan: Competition Commission of Pakistan imposes landmark fines for cartelization & market abuse

- The Competition Commission of Pakistan (CCP) has fined 14 long-distance call telecoms operators over 9 billion rupees (€69 million) for fixing prices and allocating customers. The CCP's order focuses on an agreement entered into by Pakistan Telecommunication Company Limited (PTCL) and the other long distance and international telecommunication service operators (LDI operators) in 2012 known as the International Clearing House

(ICH) Agreement. Interestingly, LDI operators were ordered by the Ministry of Information and Technology (MOIT) and the Pakistan Telecommunication Authority to establish an organization known as ICH.

(Source: Competition Commission of Pakistan order dated April 30, 2013)

- CCP has imposed a penalty of Rs 8.64 billion on the two major urea producers - Engro Fertilizer Limited and Fauji Fertilizer Company Limited for abuse of their dominant position in the fertilizer industry through unreasonable price increase (86% during 2011). The fine translates into 10% of respective turnover for ENGRO and FFC.

(Source: Competition Commission of Pakistan order dated March 29, 2013)

Spain: Spain's National Competition Commission (CNC) fines 33-year old paper envelopes cartel

CNC has imposed fines totaling more than 44 million euros on 15 companies for forming and maintaining a cartel in the paper envelopes sector for more than 30 years. In its Resolution of March 25, 2013, the CNC Council has taken the view that there is proof that the companies against which the proceedings were opened took part in a cartel to share out the Spanish paper envelopes market amongst themselves between the years 1977 and 2010.

(Source: Spain's National Competition Commission: Press Release dated April 1, 2013)



South Africa

Commission reaches settlement agreement with Telkom SA

The Competition Commission and Telkom SA SOC Limited ("Telkom") have reached a settlement agreement to resolve a series of complaints lodged against Telkom from 2005 to 2007 by Internet Service Providers and referred by the Commission in 2009, where it was alleged that the company had abused its dominance. The settlement package includes an admission of guilt; a financial penalty of R200m; functional separation between Telkom's retail and wholesale divisions along



with a transparent transfer pricing program to ensure non-discriminatory service provision by Telkom to its retail division and ISPs; effective monitoring arrangements of its future conduct; and wholesale and retail pricing commitments for the next five years estimated to yield R875m savings to customers. This agreement is subject to confirmation by the Competition Tribunal. Telkom will pay an administrative penalty of R200m over a three year period.

(Source: South Africa Competition Commission: Press Release dated June 14, 2013).

Commission Fines Builders \$140M for World Cup Bid-Rigging



The Commission on June 24, 2013, fined 15 construction companies \$140 million as part of a settlement of allegations that they colluded in rigging bids for 2010 Soccer World Cup stadiums, upgrading of airports, highway improvements and other projects. The Competition Commission investigated 140 projects in both the private and public sectors over almost four years and has reached a settlement with 15 of 18 companies.

(Source: South Africa Competition Commission: Press Release dated June 24, 2013).

United Kingdom

CC outlines measures to promote a more competitive audit market



On October 21, 2011, the Office of Fair Trading (OFT) made a reference to the Competition Commission (CC) for an investigation into the supply of statutory audit services to large companies in the UK. CC in its provisional findings report published in February 2013, found that the relevant market was a single market for the supply of audit services to FTSE 350 companies and that majority of audits are prepared by one of four firms, Deloitte LLP, Ernst & Young LLP, KPMG LLP and PWC LLP (collectively, the Big 4 audit firms). CC

found that competition was restricted in the audit market due to factors which inhibit companies from switching auditors and by the incentives that auditors have to focus on satisfying management rather than shareholder needs. In a summary of its provisional decision on remedies, the CC has put forward a package of measures to promote competition and to ensure that competition is directed towards satisfying the demands of shareholders. The remedy package includes measures to improve the bargaining power of companies and encourage rivalry between audit firms; measures to enhance the influence of the Audit Committee; and measures to promote shareholder engagement in the audit process.

(Source: Competition Commission (UK) Press Release dated July 22, 2013).

OFT issues statement of objections to pharma companies for pay for delay settlement

On April 19, 2013, the Office of Fair Trading (OFT) issued Statement of Objections to GlaxoSmithKline for abusing its dominant position for striking deals with three generic drug makers by paying them to delay launching generic version of paroxetine. The OFT alleges GlaxoSmithKline (GSK) concluded agreements which infringed competition law with each of Alpharma Limited (Alpharma), Generics (UK) Limited (GUK) and Norton Healthcare Limited (IVAX) ('the generic companies'), over the supply of paroxetine in the UK. The OFT also alleges GSK's conduct amounted to an abuse of a dominant position in the same market.

(Source: OFT Press Release dated April 19, 2013).

United States

Apple found liable of conspiracy to fix prices in E-books case

On July 10, 2013, Judge Denise Cote of the Southern District of New York issued a 160-page opinion holding that Apple conspired with five book publishers to raise e-book prices and



eliminate retail price competition in violation of Section 1 of the Sherman Act and several relevant state statutes. The five publishers – Hatchett, HarperCollins, Macmillan, Penguin and Simon & Schuster – had all previously settled with the U.S. Department of Justice (DOJ). The opinion stated that as Apple prepared to launch its iPad to the public and sought to concurrently enter the e-book market with its iBookstore, it met with the publishers and agreed to provide them with an “agency model” for e-book pricing that allowed the publishers to set the prices of the e-books themselves, subject to certain price caps. Apple’s agreements with the publishers also included Most Favored Nation provisions which ensured that Apple could match its competitors’ prices and also provided an incentive for the publishers to lobby Amazon and other retailers to change their wholesale business models to agency models. According to the court’s opinion, these agency model agreements caused e-book prices to increase, sometimes 50% or more for a specific title. The Court has yet to set a damages trial date. Apple still maintains that it did nothing wrong and has already announced its plan to appeal.

(Source: US District Court Southern District Of New York Order dated July 10, 2013)

Supreme Court holds that reverse payment patent settlements are subject to antitrust scrutiny

On June 17, 2013, arguably, the most significant patent antitrust decision in decades was delivered by the US Supreme Court reversing the order of Eleventh Circuit Court in *Federal Trade Commission v. Actavis, Inc.*, holding that “Reverse Payment” patent settlements are subject to antitrust scrutiny. The Court although, did not agree with FTC’s assertion that these settlements are presumptively unlawful. It rather provided for the examination of these agreements under the “rule of reason” as these settlements may at times violate antitrust laws.

(Source: *FTC v. Actavis*, No. 12-416, 570 U. S dated June 17, 2013)

Lockheed-Boeing rocket venture under FTC scanner



The FTC is conducting an antitrust probe of United Launch Alliance LLC (ULA), a joint venture of Boeing and Lockheed, which launches rockets

carrying U.S. government satellites into space. It has been alleged that ULA is preventing RD Amross (a joint venture of Russia's NPO Energomash and Pratt & Whitney Rocketdyne, a unit of United Technologies Corp, provides RD-180 engines for ULA rockets) from selling the engines to other rocket makers, including Orbital Sciences Corp, which is trying to break into the lucrative market for government rocket launches.

(Source: The Reuters: June 12, 2013).

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Publications

- Practical Law Company (PLC Competition) has published an article by Vaibhav Choukse titled *"Pay-for-Delay: The End of Sweetheart Deals"*. The article

focuses on the recent enforcement by US Supreme Court & EU Competition Commission on the 'pay for delay' settlements between a patent holder and generic drug maker.

(Web-link: <http://competition.practicallaw.com/6-532-9447#>).

- Manupatra Competition Law Report (June 2013) has published an article by Vaibhav Choukse titled *"Distribution of Pharmaceutical Products in India: A Changing Paradigm"*. The article focuses on a recent order of CCI in the case of *M/s Santuka Associates Pvt. Ltd. v. All India Organization of Chemists and Druggists and Ors*, which is all set to bring a paradigm shift in the distribution system for pharmaceutical products in India.



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