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From the Editor's Desk...

Dear Reader,

Season's Greetings!

Competition Commission of India (CCI) continues with its tirade against anti-competitive practices. During this quarter, CCI has initiated investigations into high-tech industry including Ericsson's FRAND licensing, online shopping portals for price predation and ACI Worldwide (electronic payment solutions). Besides, CCI also initiated research studies into the pharmaceutical sector and functional aspects of financial sector, including banks and insurance companies.

CCI hosted 3rd BRICS International Competition Conference inaugurated by Hon'ble Prime Minister Dr. Manmohan Singh in New Delhi. The conference provided an opportunity for the BRICS countries to share the challenges faced in their respective jurisdictions and gain from the experiences of good practices of mature competition authorities and the international community at large. During the two days conference, the Heads of BRICS Competition Authorities signed 'Delhi Accord' which reflects the principle of mutual trust and respect between the BRICS Competition Authorities on competition law and policy. Further, CCI and the Directorate General for Competition of the European Commission (DG, Competition) signed a Memorandum of Understanding on Cooperation in the Field of Competition Laws. Just before the BRICS Conference, the 3rd Biennial International Conference on 'Competition Reforms Emerging Challenges in a Globalized World' organized by CUTS International was also well received.

On the enforcement side, during this quarter, no major penalty was imposed by CCI except minor penalty on shoe manufacturers for forming cartel. Until date, CCI imposed a penalty of ₹ 9,797 Crores on 155 companies.

On the Appellate side, in a landmark ruling, COMPAT for the first time, agreed to introduce the concept of "relevant turnover" in the calculation of penalties on multi –product enterprises in cartel cases which is captured as a special feature in this issue.

We value your suggestions, and look forward to your continued support.

Happy reading!

Yours truly,

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Inside...

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INDIAN-PERSPECTIVE

SPECIAL FEATURE

COMPAT recognizes the concept of 'relevant turnover' for cartel cases

Competition Appellate Tribunal (**"COMPAT"**) by way of its order dated October 29, 2013 (**"Order"**), rejected the appeals filed by three Aluminium Phosphide Tablets (**"ALP"**) manufacturers i.e. United Phosphorous Limited, Sandhya Organics Chemicals Private Limited and Excel Crop Care Limited (collectively referred as 'the Appellants'), against the order of the CCI in *Suo-Moto Case no. 02/2011 (In Re: Aluminium Phosphide Tablets Manufacturers).* The COMPAT, however, substantially reduced the fine imposed by CCI from ₹ 317.91 Crores to ₹ 10.01 Crores. In April 2012, CCI found the Appellants guilty of bid rigging and collusive tendering in the supply of ALP to Food Corporation of India (**"FCI"**) and imposed a combined penalty of ₹ 317.91 Crores.

The Order holds significance in many ways including the observations made by COMPAT in relation to retrospective operation of the Act in case of bid rigging, jurisdiction and power of Director General (**"DG"**), method of calculation of penalty and the interpretation of the term 'appreciable adverse effect on competition (**"AAEC"**)'. Some of the key observations made by COMPAT are as under:

- **Retrospective operation of the Act:** Appellants argued that the alleged tender was issued on May 08, 2009 (before the notification of Section 3 of the Act) and hence, CCI has no jurisdiction to look into the alleged tender. COMPAT, however, observed that the bidding process continued till June 17, 2009 and the term "process for bidding" used in the explanation to Section 3(3) of the Act would cover every stage from notice inviting tender till the award of the contract and would also include all the intermediate stages such as pre-bid clarification and bid notifications also. Even if the price offered by the parties stood rejected, that does not absolve the parties, if it is found that they were guilty of manipulating the process for bidding.
- **Jurisdiction and power of DG:** Appellants argued that the DG has the power to investigate only on the basis of the order passed by the CCI under Section 26(1) of the Act (*prima facie* order) and DG cannot look into the conduct of the Appellants in other tenders issued by FCI. COMPAT observed that the language of the prima facie order would determine the scope of DG investigation and language of the prima facie order in the present case was broad enough to allow the DG to conduct comprehensive investigation including investigating other tenders floated by FCI.
- **Reasoned penalties and relevant turnover:** Appellants argued that the CCI has not given any reason while inflicting harsh penalties and the penalty, if any, should only be on the 'relevant turnover' of the Appellants. COMPAT observed that the CCI should give reasons while inflicting the penalties, especially in case of harsh penalties. On the issue of 'relevant turnover' COMPAT after relying on the EU & OFT fining guidelines and the order of the Competition Appeal Court of South Africa in Southern Pipeline Contractors & anr. v The Competition Commission held that the EU & OFT guidelines cannot be treated as be all and end all in the matter and would have to be considered in the light of the facts of each case but in case of multi-product company, the 'relevant turnover' should be considered i.e. only the turnover relating to the ALP tablets and not the entire turnover of the Appellants. In relation to the concept of 'relevant turnover', COMPAT observed that:

  "While arriving at a conclusion about the relevant turn over it would be open to the authorities like CCI to rely on the general principles expressed in those guidelines regarding the method of calculation etc. it should be an endeavour of the authorities to apply those principles not mechanically or blindly but after carefully considering the factual aspects. Such factual aspects could include the financial health of the company, the necessity of the product, the likelihood of the company being closed down on account of unreasonable harsh penalty etc. At the same time the

authorities would be well advised in considering the general reputation and the other mitigating factors like the first time breaches as also the attitude of the company. This list is certainly not exhaustive and the authority can and should consider all the relevant factors while considering the relevant turn over as also considering the extent of penalty on that basis. It should also be reiterated at this stage that there should be proportionality in the award of penalty, which principle has been enshrined in several judgments of the Apex Court. It cannot be forgotten that Supreme Court has time and again relied on the doctrine of proportionality while at the same time emphasizing on the aspect of deterrence. Generally the award of penalty should be in proportion to the wrong done. While considering the wrong done, of course the authority would be justified in taking into consideration all the aspects including mitigating and aggravating circumstances."

- **Appreciable adverse effect on competition (AAEC)**: COMPAT observed that the term AAEC has to be interpreted with the aid of the words that it contains. The appreciable adverse effect should be on the aspect of 'competition' itself and not restricted to the 'competitors' or rates. It is trite that with the healthy and higher competition ultimate consumer would be benefitted.

The COMPAT after evaluating mitigating and aggravating factors held that, the penalty @ 9% imposed by CCI was reasonable, but should be on the 'relevant turnover' and 'relevant turnover' should include sale in domestic market and exports. The penalty on Excel Corp Limited was reduced from ₹ 63.90 Crores to ₹ 2.91 Crores; and from ₹ 252.44 Crores to ₹ 6.94 Crores in case of United Phosphorus Limited i.e. on the 'relevant turnover'. In case of Sandhya Organics, the COMPAT took into account the size of the company and its production capacity. Given its relatively small size, the COMPAT reduced the penalty to 1/10th of the penalty imposed by the CCI. According to a Media Report[1], CCI is contemplating an appeal against the order of the COMPAT before the Supreme Court of India.

(Source: COMPAT order dated October 29, 2013)

1. http://articles.economictimes.indiatimes.com/2013-11-18/news/44202368_1_competition-appellate-tribunal-three-year-average-turnover-competition-act

Combination: CCI fines Temasek for belated filing of merger notice

On August 1, 2013, CCI passed an order against Temasek Holdings Private Ltd ('Temasek') and its subsidiaries Zulia Investments Pte. Ltd. ("Zulia") and Kinder Investments Pte. Ltd. ("Kinder"), imposing a penalty of ₹ 50 Lakhs (approx. US$74,000) for delay in filing of the merger notice as required under Section 6(2) of the Act. Temasek is an investment company owned by the Government of Singapore.

Facts of the Case

On June 6, 2013, CCI received a notice under Section 6(2) of the Act ("Notice"), given by Zulia and Kinder, both indirect wholly owned subsidiaries of Temasek (hereinafter Zulia, Kinder and Temasek are collectively referred to as the "Acquirers"), in relation to a proposed acquisition of 439 million new ordinary shares of DBS Group Holdings Ltd. ("DBSH"). The Acquirers, while filing the Notice, also filed an application for condonation of delay of 399 days. While CCI admitted the delayed filing, it also decided to initiate separate penalty proceedings under Section 43A of the Act and Regulation 48 of the CCI General Regulations, 2009, for the delay in filing. CCI issued the show cause notice to the Acquirer on June 20, 2013 as to why penalty in terms of Section 43A of the Act should not be imposed on them for not having filed the notice within the time prescribed under Section 6 (2) of the Act.

Response of the Acquirers

The response to the show cause notice was filed by the Acquirers on July 05, 2013, wherein it was inter-alia submitted that:

- It had received an incorrect legal advice from their initial Indian counsel regarding the notification requirement.
- It had not acted in any mala fide manner.
- The transaction was entirely offshore in nature; and
- The transaction had been abandoned.

Hence, in such a case of non-consummation of the transaction, no penalties ought to be imposed and if any penalty were to be imposed on them, it should be a symbolic, minimal penalty.

CCI observations and findings

In deciding about the penalty under Section 43A of the Act, CCI made following observations:

- Acquirers' plea of ignorance of filing requirements because of wrong legal advice given by counsel does not hold, as there is ample clarity in the provisions; and
- Acquirers' plea on the abandonment and non-consummation of the transaction was rejected by the CCI. CCI observed that the regulatory compliance in terms of timely filing of the notice of the proposed combination and the ultimate fate of the transaction are two entirely different issues.

CCI considered the following aggravating factors when deciding the quantum of penalty:

- No record of any mention of regulatory compliance with Indian competition laws before the execution of the SPA and no record of communication between the Acquirers and their counsel on Indian competition law compliance even after the execution of the SPA;
- No sense of urgency shown by the Acquirers, and there was a delay of 5 months even after being informed of the requirement to notify; and
- Both Temasek and DBSH have been operating in India for a long time and cannot plead ignorance of regulatory requirements

CCI considered the following mitigating factors when deciding the quantum of penalty:

- The Acquirers voluntarily gave notice under Section 6(2) of the Act before the consummation of the transaction. The Acquirers claimed to have learnt of the filing requirement only during the course of advice received later on an unrelated and separate matter. Upon learning the same, they immediately and voluntarily filed the notice; and
- The proposed combination was an offshore transaction.

Order of the Commission

CCI after considering all the relevant factors including the seriousness of the violation, the various submissions of the Acquirers, the mitigating as well as the aggravating factor decided to impose a penalty of ₹ 50 Lakhs (approx. US$74,000) on the Acquirers.

(Source: CCI order dated August 01, 2013).

CCI passes orders for closure of certain matters

CCI has passed final orders in 276 cases filed under Section 3 and 4 of the Competition 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.

Section 26(1)	Section 26(2)	Section 26(6)	Section 27
10	185	54	37

CCI approves eleven more 'Combinations' within 30 days

Keeping its promise of fast track disposal of merger regulations, CCI has approved twelve more Combinations between August - November 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 135 combinations. Full Text of the Orders can be viewed on the CCI website (www.cci.gov.in).

Media Updates

CCI imposes record fine of INR 1773 crores on Coal India for market abuse

CCI has imposed a penalty of ₹ 1773.05 crores ($290 million) on Coal India Limited (CIL) for abusing its dominant position. The final order was passed on December 9, 2013 on a batch of informations filed by

Maharashtra State Power Generation Company Ltd. and Gujarat State Electricity Corporation Limited against Coal India Ltd. and its subsidiaries (Mahanadi Coalfields Ltd., Western Coalfields Ltd., South Eastern Coalfields Ltd.). The CCI held that CIL through its subsidiaries operates independently of market forces and enjoys undisputed dominance in the relevant market of production and supply of non-coking coal in India. The Commission inter alia also held CIL and its subsidiaries in contravention of the provisions of section 4(2)(a)(i) of the Competition Act, 2002 for imposing unfair/ discriminatory conditions in Fuel Supply Agreements (FSAs) with the power producers for supply of non-coking coal. Apart from issuing a cease and desist order against CIL and its subsidiaries, the CCI directed modification of FSAs in light of the findings and observations recorded in the order. The impugned clauses related to sampling and testing procedure, charging transportation and other expenses for supply of ungraded coal from the buyers, capping compensation for supply of stones etc. Further, for effecting these modifications in the agreements, CIL was ordered to consult all the stakeholders. CIL was also directed to ensure parity between old and new power producers as well as between private and PSU power producers, as far as practicable. CCI also observed that government should take initiative to introduce more number of players in the market so that it can reduce the dominance of any one player and can facilitate competition.

(Source: CCI Order dated December 9, 2013)

CCI investigating Hiranandani Hospital for market abuse:

On a complaint filed by Ramakant Kini against LH Hiranandani Hospital, Mumbai, for abusing its dominant position in the market of maternity services, the Director General (Investigation) held that the hospital is a dominant player in the field of maternity services in and around the Powai area of Mumbai and abused its dominance by restricting the patient choice. According to the complaint, a Mumbai resident Manu Jain was refused maternity services by the hospital during the 38th week of her pregnancy because she declined to avail the stem cell banking services offered by Cryobanks International India, with which the hospital had an exclusive partnership. Manu Jain wanted to use the services of Cryobanks' principal rival, Lifecell International, as she had done during the birth of her first child. Stem cell banking service is a long-term arrangement (21 years) entered into by the patient for storing umbilical cord blood and the hospital, by insisting on its partner, effectively locked in the patient with a service provider against her choice. The matter is before CCI for final inquiry.

(Source: The Economic Times, New Delhi, November 25, 2013)

Delhi HC stays CCI proceedings against Oil PSU's

The Delhi High Court has stayed the proceedings initiated by CCI in 2012, into the alleged anti-competitive practices of the three Oil PSU's i.e. Indian Oil Corporation Ltd, Hindustan Petroleum Corporation Ltd and Bharat Petroleum Corporation Ltd, in relation to the fixing of petrol price. The Oil PSU's has filed the Writ Petition (W.P. (C) 7303/2013) before the Delhi High Court challenging the CCI order dated October 21, 2013 which held that the CCI had the jurisdiction to look into the case. PSUs had challenged the CCI's investigation saying the CCI had no jurisdiction to look into fixing of petrol prices as they are regulated by the Petroleum and Natural Gas Regulatory Board.

(Source: The Financial Express, New Delhi, November 22, 2013)

BRICS Competition authorities sign the Delhi Accord

The Heads of the Competition Authorities of the Federative Republic of Brazil, the Russian Federation, the Republic of India, the People's Republic of China and the Republic of South Africa signed a Joint Accord namely 'Delhi Accord' on November 22, 2013 during the 3rd BRICS International Competition Conference at New Delhi. The Accord reflect the principle of mutual trust and respect, considered the need of establishing good communication between the BRICS Competition Authorities on competition law and policy.

(Source: Press Information Bureau, November 22, 2013)

CCI and European Competition Commission sign MOU on cooperation

On November 21, 2013, CCI and the Directorate General for Competition of the European Commission (DG, Competition) signed a Memorandum of Understanding on Cooperation in the Field of Competition Laws. The MoU was signed during the 3rd BRICS International Competition Conference by Mr Joaquin Almunia, Vice President for Competition, EU and Mr. Ashok Chawla, Chairman, CCI. The two sides have agreed to exchange non-confidential information, experiences and views with regard to (a) Competition policy and enforcement, (b) Operational issues, (c) Multilateral competition initiatives, (d) Competition advocacy and (e) Technical cooperation initiatives in the area of competition law and its enforcement.

(Source: Press Information Bureau, November 21, 2013)

CCI approves Jet-Etihad combination

On November 12, 2013, CCI cleared the proposed acquisition of a 24% equity stake in Jet Airways ('Jet') by Etihad Airways PJSC ('Etihad') (collectively, the 'Parties'), pursuant to an Investment Agreement ('IA'), a Shareholders Agreement ('SHA') and a Commercial Cooperation Agreement ('CCA'). CCI was of the view that the proposed acquisition was unlikely to have any appreciable Adverse Effect on competition in India. The combination is the first-ever foreign direct investment by a foreign airline in an Indian carrier approved by the CCI.

While deealing with the case, CCI used the origin and destination ('O&D') method to define the relevant market. While arriving at the market definition, CCI observed that the consumer

- consider direct flights and indirect flights as substitutable
- international airports in Sharjah, Dubai and Abu Dhabi are substitutable as these destinations two hours from each other and availability of free shuttle facility.

Based on these factors, CCI concluded that the relevant market was the international air passengers market on different O&D city pairs. On the competitive assessment, CCI's observed that the market share of Jet and Etihad on the nine O&D city pairs being less than 36% will face stiff competition from other airlines on these routes including Air India as Air India is likely to increase its services on the Mumbai-Abu Dhabi and Delhi-Abu Dhabi routes. Further, on other 38 routes to/from India to other destinations there is at least one major competitor. CCI also considered the possible effect of the combination on other airline systems (strategic alliances) and concluded that a high market share of a hub airline in a point-to-point O&D city pair does not imply the absence of competition. It would only mean that the competition would be present from alternative networks and alliances. CCI noted that as per India-UAE Bilateral Air Services Agreement (BASA), the seats that are currently allowed to be operated between India and Abu Dhabi will increase to 50,000 seats by 2015. The potential market share of Jet and Etihad (after assuming the increased number of seats for Jet) is 22%, which did not reveal the possibility of any abuse. In light of the above, CCI hold that the combination will not have AAEC and approved the same. Interestingly, Anurag Goel, Head of the Combination Division and Member, CCI did not agree with the majority order and passed a dissent order. Post approval, Parties filed for rectification of the CCI order in relation to the observations made by CCI pertaining to Etihad's 'joint control' over Jet. The request was rejected by CCI on the ground that there was no mistake or factual error in the Majority Ruling.

(Source: CCI Order dated November 12, 2013).

CCI orders investigation into Ericsson's FRAND Licensing

CCI has started an investigation into the conduct of Ericsson for demanding unfair, discriminatory and exorbitant royalty for its patents regarding GSM technology from the Informant, Micromax. Micromax alleged that the royalty demanded by Ericsson was

excessive when compared to royalties charged by other patentees for patents similar or comparable to the patents held by Ericsson. Further, the Ericcson abused its dominant position by imposing exorbitant royalty rates for Standard Essential Patents (SEP), as it is well aware that there was no alternate technology available and Ericsson was the sole licensor for the SEPs of globally acceptable technology standards. CCI observed that Ericsson is dominant in the relevant market of GSM and CDMA in India and holds large number of GSM and CDMA patents. Ericsson has 33,000 patents to its credit, with 400 of these patents granted in India, and the largest holder of SEPs for mobile communications like 2G, 3G and 4G patents used for smart phones, tablets etc.The royalty rates being charged by Ericcson had no linkage to patented product, contrary to what is expected from a patent owner holding licenses on FRAND (Fair, Reasonable, and Non-Discriminatory) terms.

(Source: CCI Order dated November 12, 2013).

CCI imposes penalty on Tamil Nadu Film Exhibitors' Association

CCI has imposed a penalty of ₹ 41,393 (10% of the average turnover of the Association) on M/s Tamil Nadu Film Exhibitors' Association (TNFEA) for contravening Section 3(3) (b) of the Act relating to anti-competitive practices. In its information, M/s Reliance Big Entertainment Pvt. Ltd (RBEPL) has alleged that it was entitled to distribute a film titled 'Osthe' in Tamil language that was a remake of Hindi film Dabang. However, M/s TNFEA boycotted this film with an effort to secure a claim of its members against a third party M/s Sun TV. CCI in its inquiry concluded that the decisions and conduct of TNFEA in respect of the boycott against film 'Osthe' and other films dealt by Sun TV were in contravention of the provisions of Section 3(3) (b) of the Act. CCI has also directed M/s TNFEA to cease and desist from indulging in such anti-competitive conduct in future.

(Source: Press Information Bureau, November 07, 2013)

GlaxoSmithKline and Sanofi under CCI scanner for alleged bid rigging

On Information filed by M/s BIO-MED (P) LTD against Ministry of Health and Family Welfare, GlaxosmithKline Pharmaceutical Limited (GSK) and M/s Sanofi alleging inter alia contravention of the provisions of Sections 3 and 4 of the Act, the CCI has referred the matter for investigation. The ministry of health and family welfare procures meningitis vaccines every year for about 2 lakh Haj pilgrims. It was alleged that the GSK and Sanofi has cartelized the market through bid rotations and geographical allocations from the period 2002 to 2012. CCI after forming the prima facie view held that such a conduct prima facie appears to be in contravention of the provisions of Section 3(3) read with Section 3(1) of the Act.

(Source: The Economic Times, New Delhi, October 31, 2013)

CCI to act against Aamir Khan, 8 others for defaulting on fine

CCI has decided to take suitable and appropriate steps to recover penalties from such parties that have not paid the penalties imposed by CCI on them under the Act. CCI has released a list of the cases wherein penalties have not been paid despite there being no appeal filed or appeal having been dismissed. These include Aamir Khan, IATA Agents Association of India, Telangana Telugu Film Distributors Association, Film Distributors Association, Kerala, Andhra Pradesh Film Chamber of Commerce, All India Organisation of Chemists & Druggists and Chemists & Druggists Assn. of Goa. CCI could initiate prosecution under Section 42(3) of the Act for not complying with the orders of the Commission and follow-up reference to Income Tax Department could be made for action on recovery certificates already issued to these entities.

(Source: Press Information Bureau, October 15, 2013)

CCI conducting sector studies for possible anti-competitive activities

CCI is carrying out detailed studies on multiple sectors including agriculture, pharmaceuticals, healthcare, financial services, insurance and technology. On healthcare and pharma sector, CCI is looking at possible anti-competitive practices with regard to hospitals asking patients to take the services of a particular entity. The study in financial and insurance sector comes in the backdrop of the government push for various financial sector reforms as part of larger efforts to bolster the country's economic growth. The government is actively pursuing long-term financial sector reforms including further opening up of various segments, such as insurance and pension, to foreign players. CCI also held deliberations with the Commission for Agricultural Costs and Prices (CACP) to understand and check whether there are any unfair trade practices and similar things.

(Source: The Economic Times, New Delhi, October 06, 2013)

Delhi High Court: No hearing to the opposite party before DG submits final investigation report

The Delhi High Court by way of its order dated September 09, 2013 in *South Asia LPG Company Pvt. Ltd v. Competition Commission of India & Ors*[2] interpreted Section 26(7) of the Act to hold that, CCI need not issue a notice or give an opportunity for hearing to a party against whom information or reference is received and an investigation has been initiated by DG. The Hon'ble Court observed that a careful analysis of Section 26(5) clearly indicates that no notice to the person against whom a reference is made or information is provided to the Commission is envisaged, before the Commission considers the report of the Director General recommending that there was no contravention of the provisions of the Act. The Hon'ble Court relied on the Supreme Court judgment in Competition Commission of India v. Steel Authority of India & Ors., that no notice is required to be given to the informant or the affected party before the Commission forms an opinion as to whether a prima facie case exits from the record produced before it or not. If the law does not mandate issue of notice to the affected party before directing investigation to be made by the Director General, there would be no reason to imply such a notice before directing further investigation in exercise of the powers conferred upon the Commission under Section 26 (7) of the Act. As far as the affected party is concerned, there is no difference between directions for investigation or direction for further investigation, since any further investigation by the Director General would only be in continuation of the investigation carried out earlier by it.

(Source: Delhi High Court Order dated September 09, 2013)

2. W.P. (C) 4602/2013

CCI initiated investigation against ACI Worldwide

Pursuant to information filed by Financial Software and System Pvt. Ltd (FSSL) alleging abuse of dominant position by ACI Worldwide (ACI), CCI has directed the DG to investigate the matter. ACI is engaged in the business of developing software (BASE24) for electronic payment solutions which enables card-based payment transactions for banks. CCI observed that ACI commands a high degree of market share in comparison to its competitors. On the issue of abuse, CCI observed that the conduct of ACI in not allowing ACI Banks to choose a service provider of their choice; directing the ACI Banks not to avail the integration services of FSS, using its dominance in the upstream market of software for electronic payment systems to gain entry in the downstream market of provision for services of customization and modification in respect of software for electronic payment systems prima facie seem to contravene the provisions of Section 4 of the Act. CCI further observed that prima facie the conduct of ACI also amounts to 'tie-in arrangement' and 'refusal to deal' under Section 3(4) of the Act dealing with vertical restraints.

(Source: CCI Order dated September 4, 2013)

CCI imposes penalty of ₹ 6.25 Crores on 11 Shoe Companies

CCI has imposed a penalty of ₹ 6.25 Crores (5% of the turnover) on 11 Companies in a case filed by Director General-Supplies & Disposal (DGS&D), New Delhi relating to a tender for supply of polyester blended duck ankle boots rubber sole. This case was initiated on a reference made by Director General-Supplies & Disposal (DGS&D) alleging bid rigging and market allocation by the suppliers while bidding against the tender enquiry. After a detailed investigation, CCI held that the bidder-suppliers by quoting identical/ near identical rates had, indirectly determined prices/ rates in the Rate Contracts finalized by DG S&D and indulged in bid rigging/ collusive bidding and also controlled/ limited the supply of the product in question and shared the market of the product amongst themselves under an agreement/ arrangement in contravention of the Sections 3(3) of the Act.

(Source: CCI Order dated August 06, 2013)

CCI investigating Delhi Development Authority for market abuse

Pursuant to information filed by an individual, Dr. Adla Satya Narayan Rao alleging abuse of dominant position by Delhi Development Authority (DDA), CCI has directed the DG to investigate the matter. Informant alleged that DDA enjoyed near monopoly conferred upon it by the statute i.e. Delhi Development Act, 1957 in the development of planned townships, colonies or complexes. Further, the conditions imposed in the DDA's Scheme are abusive. CCI observed that the relevant market in this case would be the provision of service for sale of residential flats in Delhi and DDA is the biggest real estate developer in Delhi and no other developer could match/reach the size and structure of the DDA. The DDA scheme is heavily loaded in otali of DDA and prima facie imposed unfair conditions on the allottees.

(Source: CCI order dated June 11, 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 2168 cases till November 30, 2013, as per details below:

RTP cases	355
UTP cases	1033
Compensation cases	769
MTP cases	11

INTERNATIONAL NEWS

European Union

EC fines top banks € 1.71 billion for interest rate derivatives rigging

EC has fined eight international financial institutions a total of € 1.71 billion ($2.3 billion) for participating in illegal cartels in markets for financial derivatives covering EEA. Four of these institutions participated in a cartel relating to interest rate derivatives denominated in the euro currency. Six of them participated in one or more bilateral cartels relating to interest rate derivatives denominated in Japanese yen. The Commission's investigation started with unannounced inspections in October 2011. UBS and Barclays avoided fines of 2.5 billion euros and 690 million euros respectively for revealing the existence of the cartel. The Commission fined Deutsche Bank, RBS, JPMorgan, Société Générale, Citigroup and RP Martin. These are the first two decisions concerning Euro interest rate derivatives (EIRD) and Yen interest rate derivatives (YIRD) cartels since the start of the financial crisis in 2008. This is the highest fine imposed by EC till date.

(Source: European Commission: Press Release dated December 04, 2013)

EC opens proceedings against container liner shipping companies

EC has opened formal antitrust proceedings against several container liner shipping companies to investigate whether they engaged in concerted practices. Since 2009, these

companies have been making regular public announcements of price increase intentions through press releases on their websites and in the specialized trade press. These announcements are made several times a year and contain the amount of increase and the date of implementation, which is generally similar for all announcing companies. The announcements are usually made by the companies successively a few weeks before the announced implementation date. The Commission has concerns that this practice may allow the companies to signal future price intentions to each other and may harm competition and customers by raising prices on the market for container liner shipping transport services on routes to and from Europe. AP Moller-Maersk A/S, CMA CGM SA and Hapag-Lloyd were among companies raided by EU officials in 2011 over possible collusion.

(Source: European Commission: Press Release dated November 22, 2013)

ECJ confirms parent liability for jointly controlled JV

The Court of Justice of the European Union (ECJ) has issued two judgments confirming that parent companies can be held liable under EU competition law for the cartel conduct of their 50:50 joint ventures. The judgments endorse the European Commission's current hardened approach of attributing antitrust liability, wherever possible, to parent companies. In 2007, the European Commission imposed fines totaling €243.2 million on 6 groups, including El DuPont and the Dow Chemical Company (Dow), for price-fixing and market-sharing in the market for chloroprene rubber. El DuPont and Dow were held jointly and severally liable for the conduct of their jointly controlled joint venture, DDE. The Commission concluded that both Dow and EI DuPont exercised 'decisive influence' over the JV's commercial conduct and policies. In particular, the Commission placed weight on the composition and role of the JV's supervisory 'Members Committee', on which high level executives of both parents sat, and which was responsible for approving key strategic decisions of the JV. El DuPont and Dow challenged the EC's fining decisions before the General Court (GC), arguing that they could not be held liable for their joint venture's infringements. The General Court, however, agreed with the EC's assessment that the economic, legal and organizational factors that tied the companies together demonstrated that both El DuPont and Dow exercised decisive influence over DDE's conduct on the relevant market. Both parties then appealed the GC's judgments before the ECJ. On September 26, 2013, the ECJ rejected both appeals in full. The ECJ rejected the argument that the parents should not be held liable on the basis that they were unaware that the infringement had occurred. ECJ added that although for merger purposes a 'full function' joint venture such as DDE may be deemed to be economically autonomous as regards its day to day running, parent companies may still be found to have exercised decisive influence over its strategic decisions for the purposes of imputing cartel liability.

(Source: European Court of Justice: Decision dated September 26, 2013)

EC approves the acquisition of Olympic Air by Aegean Airlines

EC on October 09, 2013, approved Aegean Airlines' acquisition of struggling rival Olympic Air for €72 million ($97 million), according to the companies. The commission rejected a similar bid by Aegean in 2011, saying the merger would create a monopoly among Greek air carriers. The Commission's phase II investigation has shown that Olympic Air would be forced to exit the market in the near future due to financial difficulties if it is not acquired by Aegean. The Commission notes that entry in the immediate future by other airlines is unlikely on any of these routes due to a variety of factors such as the high costs of entry and Greece's current dire economic situation. However, despite competition concerns, the Commission is sufficiently convinced that Olympic is a 'failing firm' and would go out of business soon.

(Source: European Commission: Press Release dated October 09, 2013)

Others

Brazil: CADE blocks acquisition of mangels steel unit by Armco

The Brazilian Administrative Council for Economic Defense, CADE, on October 10, 2013, blocked the acquisition of Mangel Industrial S/A 's guard rails and galvanized steel units by Armco Staco S.A. The transaction involved market leader Armco taking over a part of the second-largest player in Brazil's steel market. The tribunal found the merger would have given Armco a 70 % market share and considerable economic power in the guard rails market. And the remaining market competitors, potential importers, and incomings companies would not be sufficient to preserve competition under guard rails market. Hence, the operation could bring negative effects on products' trading.

(Source: CADE: Press Release dated October 10, 2013)

Canada: Canadian Gas Stations found guilty of price-fixing

Following an investigation by the Competition Bureau and a trial before the Quebec Superior Court in Sherbrooke, Les Pétroles Global Inc. has been found guilty today for its role in a gasoline price-fixing conspiracy. The Company was found guilty for conspiring to fix the price of retail gasoline in Victoriaville, Sherbrooke and Magog, Quebec, and is scheduled to be sentenced at a later date. Thirty-nine individuals and 15 companies have now been charged with criminal price-fixing in this case. To date, 31 individuals and seven companies have pleaded or were found guilty with fines totaling over $3 million. Of the 31 individuals who have pleaded or were found guilty, six have been sentenced to terms of imprisonment totaling 54 months.

(Source: Canadian Competition Bureau: Press Release dated August 09, 2013)

China: Dairy companies fined for price fixing

On August 7, 2013, the National Development and Reform Commission (NDRC) issued fines totaling around $110 million to six producers of baby formula (namely Danone,

Mead Johnson, Fonterra, Abbott, FrieslandCampina and Biostime) for price-fixing and anti-competitive behavior. The companies tried to fix minimum resale prices of their products, limiting competition in the market. Mead Johnson will pay a fine of 203.8 million yuan; Danone's Dumex unit will pay 172 million yuan and Biostime 162.9 million yuan. Frieslandcampina's penalty is 48 million yuan, Abbott's penalty is 77.3 million yuan and Fonterra's is about 4.5 million yuan. Collectively, these constitute the largest fine ever imposed by the NDRC.

(Source: The Bloomberg: August 07, 2013).

Hungary: Competition Authority fined 13 banks for cartelization

The Gazdasági Versenyhivatal (GVH, the Hungarian Competition Authority) imposed a fine of 99.5 billion forints (€31.6 million) on 11 financial institutions due to their concerted practice aimed at limiting the full prepayment of foreign currency loans. GVH found that the undertakings under investigation had violated the Competition Act by coordinating their strategies between September 15, 2011 and January 30, 2012 through the exchange of information qualified as a business secret in order to reduce the full prepayment of foreign currency based mortgages on fixed exchange rates by limiting access to loans which would have been suitable to redeem these loans.

(Source: GVH: Press Release dated November 23, 2013)

Germany: Federal cartel office penalized manufacturers of household porcelain for cartelization

The Federal Cartel Office has imposed fines totaling just under 900,000 euros on the company's china factory Christian Seltmann GmbH and KAHLA / Thüringen Porzellan GmbH, the ceramic industry association (Association of Ceramic Industry) and

two Individuals Involved. The proceedings were triggered by an application for leniency by the company Villeroy & Boch AG. In February 2011 the Bundeskartellamt had carried out searches at six porcelain manufacturers in Germany and their trade association. The investigations which followed have shown that the porcelain manufacturers agreed, inter alia, to raise their prices already from October 01, 2006 in order to implement the increase in value-added tax which only came into effect on January 01, 2007. The association actively assisted the members of the cartel with their agreements. Two of the companies concerned could not be prosecuted due to insolvency and the proceedings against two other parties involved were discontinued for other reasons.

(Source: Federal Cartel Office: Press Release dated October 17, 2013)

Latvia: Latvian Gas fined for market abuse

Competition Council (CC) has issued a decision finding that the JSC "Latvian Gas" has abused its monopoly position by refusing to supply natural gas agreement for new users before they had unpaid debts of the previous user. CC ordered JSC "Latvian Gas" to stop the infringement and imposed a fine of U.S. $1,567,180.

(Source: Latvian Competition Council: Press Release dated October 11, 2013)

Netherland: ACM imposes fines on magazine-pack suppliers for cartel activities

The Netherlands Authority for Consumers & Markets (ACM) has imposed fines on thirteen undertakings totaling more than EUR 6 million for cartel activities in the market of pre-selected magazine packs and has held several executives jointly and severally liable for a part of these fines. The undertakings shared the market amongst themselves. They agreed not to actively approach each other's customers, and made arrangements regarding their territories. As part of these arrangements, they frequently exchanged information.

(Source: ACM: Press Release dated November 15, 2013)

Spain: CNC imposes landmark fines for cartelization & market abuse

- **Container Transport Sector:** CNC levies fines of more than €43 million on several associations involved in container transport in the Port of Valencia for agreements to fix prices and share markets in collaboration with the Valencia Port Authority and the Department of Infrastructure and Transport of the Valencia Community Government. Port of Valencia associations violated the Act by distorting the normal functioning of supply and demand in container transport services on a continual and repeated basis in the form of agreements to unify the price of road transport and other transport-related services, including compensation for downtime, and by means of coordinated implementation of CPI and diesel increments. Toward this end they shared out the market and constrained supply by limiting the vehicles allowed to enter and provide services in the port.

(Source: Spain's National Competition Commission: Press Release dated October 02, 2013)

- **Container Transport Sector:** The Council of the CNC has delivered a Resolution in which it imposes fines exceeding €430,000 on the Asociación de Empresarios de Transporte de Contenedores de la Zona Centro (ASEMTRACON) and on 17 companies from the container transport sector, after finding that ASEMTRACOM had issued a collective recommendation on prices and that an agreement had existed between companies involved in the transport of containers. The aim of the conduct was to reach an agreement on how the "fuel surcharge" clause should be applied and on its amount. It entailed passing on to customers – by mutual agreement and automatically – an increase in prices which was supposedly due to fluctuations in one of the main cost components of container transport companies.

(Source: Spain's National Competition Commission: Press Release dated September 24, 2013)

- **Lift Manufacturers:** The CNC imposes fines totaling more than 4.8 million euros on four lift manufacturers including Schindler, Otis, Imem and Eninter, for hindering the business of competitors in the lift equipment maintenance market by employing unfair methods. In its resolution the Council takes the view that the communications sent by companies contained statements liable to discredit, undermine or denigrate competitors in the lift maintenance and repair market.

(Source: Spain's National Competition Commission: Press Release dated September 23, 2013)

- **Elastomeric Foam Market:** The CNC has imposed fines of over €8.8 million on the two main manufacturers of elastomeric foam in Spain on account of agreements they had – spanning at least eleven years – to increase sale prices and share out the market. In the opinion of the Council, the conduct consisted in an agreement to increase sale prices and respect each other's client base over a period of at least 11 years.

(Source: Spain's National Competition Commission: Press Release dated September 17, 2013)

- **Collecting Society:** The CNC Council has issued a resolution in which it fines the collecting society AGEDI €51,250, having found proof that it abused its dominant position in the market for reproduction and public broadcasting of audio-visual works on jukeboxes. AGEDI abused its dominant position in the market for the management of reproduction and public broadcasting rights to audio-visual works on jukeboxes, which was perpetrated by the establishment of an unfair, not very transparent and discriminatory system for the management of the intellectual property rights in the music videos played on jukeboxes, which restricts competition in the downstream markets in which those rights constitute an essential input.

(Source: Spain's National Competition Commission: Press Release dated September 02, 2013)

- **Car Rental Market:** The CNC has fined seventeen companies and two associations over €35 million as a result of agreements to fix prices and trading

conditions in the driver-less car rental market. CNC considered it proven that there had been a single continuing infringement as a result of the agreements entered into and implemented through contacts and meeting between the representatives of the entities involved between May 27, 2005 and October 2011. The purpose of the agreements adopted by the cartel members was to fix prices (either minimum prices or by directly increasing those prices, as well as maintaining them during specific periods) and to establish a common commercial policy with respect to the beginning and end of each season (high, mid and low) and for extras and the associated prices (surcharges for baby seats, additional drivers, etc.).

(Source: Spain's National Competition Commission: Press Release dated August 05, 2013)

United Kingdom:

OFT investigates pricing restrictions in sale of mobility scooters and sports bras

In September 2013, the Office of Fair Trading ("OFT") issued statements of objection ("SO") in two separate resale price maintenance cases. The first relates to the sale of sports bras, and the second to mobility scooters. Distinct products, sold in different ways, but both have allegedly been the subject of arrangements between suppliers and retailers aimed at artificially managing the prices that consumers pay. The investigation into price fixing for sports bras was launched in April 2012. It focused on the conduct of DB Apparel UK Limited ("DBA") with regard to its Shock Absorber range of sports bras. Between 2009 and 2011, DBA allegedly entered into nine agreements with three major department store chains covering nationwide sales of multiple products within the Shock Absorber range. The agreements contain provisions which set a fixed or minimum resale price for the products, thereby resulting in prices being higher than they might otherwise have been. The OFT's decision to issue an SO to Pride Mobility Products Limited ("Pride") and a number of the retailers that sell its mobility scooters follows a market study on the

mobility aids sector which concluded in 2011. Pride and its retailers are accused of being party to arrangements which prevented the retailers from advertising online prices at levels below Pride's recommended retail price.

(Source: OFT: Press Release dated September 20 & 24, 2013)

Competition and Markets Authority comes into existence

On October 01, 2013, the UK Competition and Markets Authority (CMA) came into existence as an independent legal entity, in readiness for the new UK competition regime coming into force on April 01, 2014. The CMA has been created under the Enterprise and Regulatory Reform Act 2013 and will operate in 'shadow' form until 1 April, when it will take over the competition (and certain consumer) functions of the Office of Fair Trading and the functions of the Competition Commission.

United States: Nine Auto Parts Companies and Two Executives Plead Guilty

Nine Japan-based companies and two executives have agreed to plead guilty and to pay a total of more than $740 million in criminal fines for their roles in separate conspiracies to fix the prices of more than 30 different products sold to U.S. car manufacturers and installed in cars sold in the United States and elsewhere. The combined corporate fines were over $740 million, nearly doubling the total fines that companies have paid in the auto parts investigation, which now stands at over $1.6 billion. The price-fixed automobile parts were sold to Chrysler, Ford and General Motors, as well as to the U.S. subsidiaries of Honda, Mazda, Mitsubishi, Nissan, Toyota and Fuji Heavy Industries–more commonly known by its brand name, Subaru.

(Source: DOJ: Press Release dated September 26, 2013)

VAISH ACCOLADES

MM Sharma participated as a Speaker during the 3rd Biennial International Conference on "Competition Reforms Emerging Challenges in a Globalized World" by CUTS International and addressed the Conference on *"Antitrust Enforcement on Cartels- Asian Prospective"* on November 19, 2013.

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