# Competition Law Bulletin

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VAISH ASSOCIATES ADVOCATES
Corporate, Tax and Business Advisory Law Firm

## From the Editor's Desk...

Dear Reader,

Vaish Associates, Advocates are happy to launch a bi-monthly newsletter on Competition Law. It is an initiative to keep you abreast with the developments in this new area of law and policy in India and abroad.

Since 1991, India has been changing from the "command-and-control" regime to an economic regime based on free market principles. The economic reforms based on liberalization, privatization and globalization necessitated radical changes in policies, inter-alia, relating to industrial licensing, foreign direct investment, technology import, doing away with government controlled monopolies in sectors like civil aviation, telecom, postal services, banking etc. The underlying objective is to introduce competition in the domestic markets to improve efficiency, increase productivity and reduce cost of production. Consequent change in concepts of "size" and "monopoly" resulted in amendments to the then existing Monopolies and Restrictive Trade Practices Act, 1969 in 1991. However, that fell short of the requirement of free market economy. The decision of the Central Government to bring in the Competition Act, 2002, compatible with similar legislations in the developed countries is, therefore, a welcome step in the right direction. The enforcement of this new Act got delayed due to Public Interest Litigation in the Supreme Court, which resulted in amendment in the Act in 2007, which brought about significant changes, which are discussed in this edition.

The provisions of the Competition Act, 2002, relating to anti-competitive agreements and abuse of dominant position by enterprises, have been notified with effect from May 20, 2009,and the Competition Commission of India (CCI) has become operational as an expert watchdog monitoring, like the European Commission or the Federal Trade Commission of the United States. CCI, with a mandate of, inter-alia, "promoting and sustaining competition in markets" is expected to develop the jurisprudence on competition law in India with its decisions. This first issue of Competition Law Bulletin provides you an overview of the Competition Act, 2002, and the transition of cases from the MRTP Commission to CCI. The International section informs about some recent anti-trust inquiries started in Europe, including the sector inquiry against some Indian pharmaceutical companies which will give you some International perspective on Competition Law. We encourage you to come back to us with your feed back by way of comments, suggestions and views to enable us to improve the quality of coverage.

Yours truly,

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## INDIAN PERSPECTIVE

### An overview of the Competition Act, 2002

In the wake of economic liberalization and widespread economic reforms introduced by India since 1991 and in its attempt to march from a "command – and - control" regime to a regime based on free market principles, India decided to replace its then existing competition law namely, the Monopolies and Restrictive Trade Practices Act, 1969 (the "**MRTP Act**") which was primarily designed to restrict the growth of monopolies in the market with a modern competition law in sync with the established competition law principles. As the first step towards this transformation, a new Competition Act, 2002 ("**Competition Act**") was enacted which received Presidential assent on 13th January, 2003. The Competition Act, in its preamble, seeks to achieve the following objectives:

- Prevent practices having adverse effect on competition.
- Promote and sustain competition in the markets.
- Protect the interests of consumers.
- Ensure freedom of trade carried on by other participants in markets , in India.

### Competition Commission of India - A background

The above objectives of the Competition Act are sought to be achieved by the establishment of the **Competition Commission of India ("CCI")** which was established by the Central Government with effect from 14th October, 2003. CCI is, accordingly, mandated to prohibit "anti-competitive agreements" and "abuse of dominant position" by enterprises and also regulate "combinations"(mergers or amalgamations or acquisitions) through a process of inquiry/ investigation.

However, before, CCI could be fully constituted, a Public Interest Litigation was filed in the Supreme Court of India challenging its constitution. This matter was finally disposed by the Supreme Court in January 2005 after an assurance was given by the Government of India to amend the Competition Act by creating a separate adjudicatory appellate authority while leaving the expert regulatory space for CCI.

Accordingly, the Competition Act was amended in September 2007, which, inter-alia, provided for the setting up of a **"Competition Appellate Tribunal"** (Appellate Tribunal), to be headed by a judicial member to adjudicate appeals against orders of CCI and also to determine compensation claims arising out of the decisions of CCI. The Appellate Tribunal has since been constituted and is headed by a retired judge of the Supreme Court of India, Hon'ble Dr. Justice Arijit Pasayat. CCI has also been re-constituted on 28th February, 2009 and besides the Chairperson, five other Members have since been appointed. CCI presently comprises the following six Members, including the Chairperson:

I. Shri Dhanendra Kumar – Chairman
ii. Shri H. C. Gupta – Member
iii. Shri R. Prasad – Member
iv. Shri P. N. Parashar – Member
v. Dr. Geeta Gauri – Member
vi. Shri Anurag Goel – Member

The other significant amendment in the Competition Act was to provide for compulsory notification for all proposed "combinations" to CCI for determination of their likely effect on competition in India.

### Enforcement of the Competition Act, 2002

The Government of India has notified selected portions of the Competition Act for enforcement, relating to ***anti-competitive agreements*** (section 3) and ***abuse of dominant position*** (section 4) by enterprises. The provisions of the Competition Act related to regulation of combinations (section 6) have not been notified so far.

The "General Regulations" containing the procedure for filing "information" relating to such anti competitive agreements or allegations of abuse of dominance by enterprises or groups thereof and matters connected therewith are displayed on the website of CCI (www.cci.gov.in).

## Anti-Competitive Agreements (Section 3)


An agreement in respect of production, supply, distribution, storage, acquisition or control of goods or provision of services, which causes or is likely to cause *appreciable effect* on *competition* within India, is defined to be an anti-competitive agreement. The Competition Act prohibits an anti-competitive agreement and declares that such agreement shall be a *void agreement*. It is noteworthy that the prohibition contained in Section 3 is not absolute and permits **joint venture agreements** in case certain parameters are met. Anti-competitive agreements could be both **horizontal** and **vertical.**

***Horizontal Agreements*** (agreements between direct competitors), are:

(a) Agreement to fix prices;

(b) Agreement to limit production, supply, markets, technical development, investments or provisions of services;

(c) Agreement to geographically allocate markets or source of production or provision of services - by allocation of geographical area, type of goods/services or number of customers; and

(d) Bid rigging and collusive bidding.

These horizontal agreements are **presumed** to have appreciable adverse effect on competition, which is similar to the *per se rule*. ***Cartel,*** being the most pernicious form of horizontal agreement, has been defined to include an association of producers, sellers, distributors, traders or service providers who, by an agreement amongst themselves, limit, control or attempt to control the production, distribution, sale or price of, or trade in goods or provision of services.

***Vertical Agreements*** (agreements between enterprises at different levels of the production chain in different markets, such as agreements between a manufacturer and a distributor or a distributor and a retailer etc.) are:

(a) Tie-in arrangement;
(b) Exclusive supply agreement;
(c) Exclusive distribution agreement;
(d) Refusal to deal;
(e) Resale price maintenance.

Although such arrangements are common business practices and they infringe the law only, if they reduce competition. The above five categories of vertical agreements have the potential for foreclosing competition by hindering entry of new players in the market and hence may be anti-competitive. Horizontal agreements other than those mentioned above and the vertical agreements including those mentioned above are dealt with on **rule of reason** basis.

## Implications of enforcement of Section 3

Any agreement which may cause an adverse effect on competition in the relevant market in India is likely to be challenged before CCI and if, proved to violate Section 3, the same can be declared null and void and, hence, legally unenforceable. Such agreements being private agreements are not likely to be known to outside world except when either any of the party to the agreement chooses to file complaint or any of the third parties likely to be effected by such agreement, e.g., customers or consumers, chose to challenge the agreement before the CCI. It will, therefore, be advisable to have these agreements examined to reduce the possibility of a challenge.

## Dominant Position

What would constitute a "Dominant position" for an enterprise is defined in the Competition Act. But the "dominant position" held by an enterprise or a group by itself is not prohibited. The Competition Act, however, prohibits abuse of such dominant position by an enterprise or a group. CCI is empowered to inquire whether an enterprise or a group has the dominant position and whether it has abused such dominant position on the basis of:

(a) Its own motion, or
(b) Information received from any person, consumer or their association or any trade association, or
(c) On a reference received from the Central Government, State Government or a statutory authority.

### Abuse of Dominant Position (Section 4)

The Act enumerates the following business practices, any of which if found to be conducted by an enterprise or a group will lead to the inference of abuse of dominant position by that enterprise/group; *provided* that the enterprise/ group is found to be dominant in the relevant market:

(a) Imposition of unfair or discriminatory condition in purchase or sale of goods or services; or on price in purchase or sale, including **predatory pricing;** or

(b) Limiting or restricting production of goods or provision of services or market therefor; or

(c) Limiting or restricting technical or scientific development relating to goods or services to the prejudice of consumers; or

(d) Denying market access in any manner; or

(e) Making conclusion of contracts subject to acceptance by other parties of supplementary obligations which, by their nature or commercial usage, have no connection with the subject of such contracts; or

(f) Using its dominant position in one relevant market to enter into or protect other relevant market.

### Implications of enforcement of Section 4

The enforcement of Section 4 brings within its ambit all such enterprises which enjoy "dominant position" in the relevant market, including the public sector enterprises or departments of Government engaged in any trade or business activity not covered under the sovereign functions of the State. In an inquiry under Section 4, unlike the one under section 3, appreciable adverse effect on competition in the relevant market is not required to be proved but any of the 6 prohibited business practices listed in Section 4 is sufficient to bring the dominant enterprise within the ambit of scrutiny by CCI and instances of such prohibited activities in India are not scarce. For instance, if a public sector enterprise attempts to deny market access to a private enterprise who may be its competitor in any product, a complaint of abuse of dominant position would lie by such private enterprise before CCI. Even multinational corporations operating in India having large market shares in the relevant market are subject to the scrutiny by CCI if they are found to be indulging in any of the prohibited business practices.

The consequences of inquiry by CCI into any such allegation of abuse of dominance by a large enterprise are too serious to be ignored as it can even order the division of such enterprise into smaller groups which may have serious consequences for the business and investors. Expert advice may, therefore, be considered in case of enterprise with large market shares.

### Orders that CCI can pass

CCI has vast powers in relation to anti-competitive agreements and abuse of dominant position. If CCI comes to the conclusion that there is an anti-competitive agreement, which has caused or is likely to cause appreciable adverse effect on competition within India, or any enterprise has abused its dominant position in the market, it may pass all or any of the following Orders:

(a) Direct the parties involved in such agreement, or abuse of dominant position, to discontinue acting upon such agreement and not to re-enter such agreement or discontinue such abuse of dominant position, as the case may be;

(b) Impose such **monetary penalty**, as deemed fit but not exceeding ten per cent of the average of the turnover for the last three preceding financial years, upon each of the parties to such agreement or abuse;

(c) Direct that the agreement shall stand modified to the extent and in the manner as may be specified in the order;

(d) Direct compliance of its orders/directions including payment of costs;

(e) Direct the **division of an enterprise** abusing the dominant position to ensure that it does not abuse its dominance; and

(f) Pass such other order or issue such other direction as CCI deems fit.

### Execution of orders of CCI imposing monetary penalty

CCI is empowered to frame regulations for the recovery of the monetary penalty imposed under the Competition Act, which may include a reference to the Income Tax Authority for recovery of the penalty as tax due under the Income-tax Act, 1961.

### Consequences of Contravention of the orders of the CCI

CCI has vast powers to ensure compliance of its orders or directions. The first non-compliance entails punishment with fine which may extend to Rs. one lakh per day during which such non-compliance occurs, subject to a maximum of Rs. ten crores. The second non-compliance is to be tried before the Chief Metropolitan Magistrate, Delhi only on a complaint filed by CCI and may entail imprisonment for a term which may extend to three years or with fine which may extend to Rs. twenty-five crores, or with both.

### A word of caution on "Mergers and Acquisitions"

It needs to be noted that the provisions relating to regulation of "**combinations**" (mergers, acquisitions and amalgamations) are still to be notified. The same are, however, likely to be notified any time after CCI finalizes the regulations for the same, prescribing the "form" and the "fee" etc. in which such mergers etc will have to be notified.

On notification of these provisions it shall be compulsory for all enterprises which have their assets or turnover beyond the "threshold limits' (prescribed in section 5) to notify their proposed "combinations" to CCI and obtain clearance. It needs to be noted that after the notification, CCI can examine even such "combinations" which though executed before the notification, may have caused adverse effect on competition in the relevant market either on an "information" provided by any person or of its own motion.

It also requires to be noted that since all acquisitions, mergers etc are executed through "agreements" between enterprises, such "agreements" even otherwise may fall within the scrutiny of CCI either as horizontal agreements under section 3(3) or as vertical agreements under section 3(4) of the Competition Act if post merger they are likely to raise "unilateral effects" or "co-ordinated effects" concerns on competition in the relevant market(s) and if they result in increasing prices etc., post merger, they can be examined by CCI . If such "effects "are proved, CCI is empowered to order for division of such merged entities under section 28 of the said Act. Seeking expert advice is, therefore, advisable.

### Major changes made by the Competition (Amendment) Act, 2007


The Competition (Amendment) Act, 2007 was approved by the Parliament in September 2007 and received Presidential assent on 24th September, 2007. The amendment brought significant changes in the then existing regulatory infrastructure established under the Competition Act. The major changes are:

1. Notification of all "combinations" i.e. mergers, acquisitions and amalgamations to CCI made compulsory.

2. CCI to be an expert body which will function as a market regulator for preventing anti competitive practices in the country and would also have advisory role and advocacy functions.

3. CCI to function as a collegium and its decisions would be based on simple majority. Omits power of CCI to award compensation to parties against proven anti competitive practices indulged in by enterprises.

4. Establishment of a Competition Appellate Tribunal with a three-member quasi judicial body to be headed by a retired or serving Judge of the Supreme Court or Chief Justice of a High Court to hear and dispose of appeals against any direction issued or decision made or order passed by the CCI.

5. Competition Appellate Tribunal to also adjudicate upon claims of compensation and to pass orders for the recovery of compensation from any enterprise for any loss or damage suffered as a result of any contravention of the provisions of the Competition Act, 2002.

6. Orders of Competition Appellate Tribunal can be executed as a decree of a civil court.

7. Appeal against the orders of the Competition Appellate Tribunal to the Supreme Court.

8. New Powers upon sectoral regulators to make suo moto reference to CCI on competition issues in addition to the earlier provision of making a reference on a request made by any party in a dispute before it. Also, similar powers conferred upon CCI.

9. Allows continuation of the MRTPC till two years after the constitution of CCI for trying pending cases under the MRTP Act and to dissolve the same thereafter.

## Dissolution of MRTPC announced with a "sun set" clause

CCI has become functional with the appointment of a full time Chairman and five Members but in the absence of notification of section 66 of the Competition Act,

the Monopolies and Restrictive Trade Practices Commission (MRTPC) continued to function and was receiving complaints adding to its backlog of pending cases.

With the enforcement of sections 3 and 4 of Competition Act, w.e.f. 20th May, 2009, there appeared no valid reason to keep MRTPC functional any more. More so, in terms of Section 66 of the Competition Act, MRTPC has to be dissolved within a period of two years of the constitution of the CCI and the MRTP Act repealed. We are happy to note that the Government has now decided to remove this anomaly and section 66 has been notified from 1st September, 2009.

Consequently, the MRTPC will cease to exist after a "sun set" period of two years i.e. on 31st August, 2011.

## Transfer of cases on dissolution of MRTPC

Section 66 of the Competition Act provides that on dissolution of the MRTPC, the cases and other matters pending either before the MRTPC or the DG(I&R) as mentioned in sub section (3) to sub section (8) of section 66 of the Competition Act will be transferred to only three authorities i.e. (i) Competition Appellate Tribunal, (ii) CCI and (iii) the National Commission constituted under the Consumer Protection Act, 1986. The details of these "transfers" of pending cases and other proceedings, as mentioned in sub section (3) to sub section (8) of section 66 of the Competition Act are as under:-

(i) <u>Cases to be transferred to Competition Appellate Tribunal :-</u>

As per sub section (3) and sub section (5) of section 66 of the Competition Act, the following cases shall be transferred to the Competition Appellate Tribunal :-

(a) All cases pertaining to Monopolies and Trade Practices or Restricted Trade Practices including such cases in which Unfair Trade Practice has also been alleged. [sub section (3)]. These cases would have arisen under sections 31 and 37 of the MRTP Act; and

(b) All cases pertaining to Unfair Trade Practices referred to in clause (X) of sub section (1) of section 36A of MRTP Act. [sub section (5)]. These cases relate to giving false or misleading facts disparaging the goods, services or trade of another person.

(ii) Proceedings to be transferred to CCI:-

As per sub section (6) and sub section (8) of section 66 of the Competition Act, the following investigations or proceedings shall be transferred to CCI:-

(a) All investigations or proceedings, other than those relating to Unfair Trade Practice pending before the DG (I&R). [sub section (6)]; and

(b) All investigations or proceedings relating to Unfair Trade Practices referred to in clause (X) of sub section (i) of section 36A of MRTP Act pending before the DG(I&R). [sub section (8)]. These investigations or proceedings relate to giving false or misleading facts disparaging the goods, services or trade of another person.

(iii) Cases and proceedings to be transferred to The National Commission under Consumer Protection Act, 1986:-

As per sub sections (4) and (7) of section 66 of the Competition Act, the following types of cases are/or investigations or proceedings shall be transferred to the National Commission:-

(a) All cases pertaining to Unfair Trade Practices defined under section 36A of the MRTP Act except those referred to in clause (X) of sub section (1) of section 36A of the MRTP Act. These exceptions relate to cases of giving false or misleading facts disparaging the goods, services or trade of another person. [sub section (4)]; and

(b) All investigations or proceedings relating to Unfair Trade Practices as defined under section 36A of the MRTP Act pending before the DG (I&R), except those relating to giving false or misleading facts disparaging the goods, services or trade of another person. [sub section (7)].

### CCI initiates investigations

CCI has started receiving complaints for alleged violations of sections 3 and 4 of the Competition Act. The first complaint was filed by the Cinema Multiplex owners from Mumbai against the distributors and producers of Bollywood. The matter is reportedly under investigation by the Director General (DG) of CCI. As per our sources, seven complaints filed before CCI are under examination.

## INTERNATIONAL NEWS

### Sweden to End Passenger Rail Monopoly

As the Swedish government pushed ahead with market-oriented reform, plans are underway to open up the railways to full competition by 2010. A bill submitted to the Swedish Parliament proposes the gradual deregulation of passenger rail services. As the first step, weekend services will be opened up to competition in July 2009. International passenger railway services will then be opened up in October 2009, followed by the national network in 2010.

Thus, if the bill passes through Parliament, passenger rail services will be open to full competition from October 2010.

*(Source: ILO, 27.05.2009 –CUTS C-CIER ReguLetter Volume 10, No.2/2009)*

## *Abuse of Dominance*

### European Commission initiates sector inquiries against 3 Indian pharmaceutical companies :

On 8th July, 2009 the European Commission ("EC"), the European Union's antitrust regulator, decided to initiate formal antitrust investigation against French Pharmaceutical Company Les Laboratoires Servier ("Servier") for suspected breaches of the EC Treaty's rules on restrictive business practices (Article 81) and on abuse of a dominant market position (Article 82). The decision to initiate proceedings also concerns a number of generic companies

including three Indian Companies **- Lupin Limited, Matrix Laboratories Limited (subsidiary of Mylan Inc. and Niche Generics Limited (subsidiary of Indian Company Unichem Laboratories Limited),** Slovenian KRKA and Anglo-Israeli Company Teva UK Limited / Teva Pharmaceutical Industries Limited as **regards a number of individual, possibly restrictive, agreements between each of them and Servier.** The start of formal proceedings followed unannounced inspections carried out by EC in several Member-States of the European Union. EC raided facilities of many drug makers, including GlaxoSmithkline (GSK) and Sanofi Aventis following complaints that non-branded drugs were coming slow into the market because generic drug makers were teaming with patent holding companies to delay launches. The legal basis for this procedural step is Article 11(6) of Council Regulation No. 1/2003 and Article 2(1) of Commission Regulation No. 773/2004.

The proceedings do not imply that the EC has proof of the infringements but merely means that EC will deal with the cases as a matter of priority. The companies' rights of defense will be fully respected. There is no strict deadline to complete inquiries into anticompetitive conduct. If the charges leveled against these companies are proved, they may face a fine of up to 10 per cent of their revenues in Europe.

*(Source: FE, 16.7.2009)*

### EU slaps Intel with Antitrust Fine

The EU fined Intel Corp a record US$ 1.45bn, saying the world's biggest chipmaker used illegal sales tactics to shut out smaller rival Advanced Micro Devices Inc. (AMD). The fine exceeded a US$ 1,275 million abuse of dominance penalty for Microsoft Corp in 2008.

Intel called the decision "wrong" and said it would appeal. Intel has about 80 per cent of the world's personal computer microprocessor market and faces just one real rival, AMD.

The EC says Intel paid computer makers Acer, Dell, HP, Lenovo and NEC to postpone or scrap plans to launch products using AMD chips, paid illegal rebates to encourage them to use Intel chips and paid German retailer Media Saturn Holding to stock computers with its chips. The antitrust fine, imposed after an eight-year investigation, is the biggest the EU's executive arm has imposed on an individual company.

*(Source: FE, 13.05.2009–CUTS C-CIER ReguLetter Volume 10, No.2/2009)).*

### ArcelorMittal battle continues in South Africa

Steel giant ArcelorMittal's four-year battle with the South African competition authorities over its pricing policies is set to continue with the Competition Appeal Court finding that there was a prima facie case that its flat-steel products were overpriced. On 29th May, 2009, three appeal court judges, led by Judge President Dennis Davis set aside the Competition Tribunal's judgment and referred the matter back to the Tribunal with guidelines on how to determine if excessive pricing took place.

The judges found that the Tribunal's approach was "fundamentally flawed". The Tribunal simply examined the structure of the market and the way ArcelorMittal set prices by cutting supply locally.

*(Source: BD, 01.06.2009 –CUTS C-CIER ReguLetter Volume 10, No.2/2009)*

### Lafarge under investigation in Romania for abuse of dominant position

Lafarge, the world's largest cement maker, is under investigation by Romania's competition authorities, following allegations that the construction group could be abusing its dominant market position.

Romanian investigators raided Lafarge headquarters and its two factories in Hoghiz and Medgidia. The regulator said the "dawn raids" were part of an investigation into the possible violation of Romanian competition law. Documents and declarations seized during the inspections are being analyzed.

In its 2008 annual report, Lafarge said: "Romania sales benefited from pricing gains and a very dynamic market". Lafarge is being investigated by the EC, along with other cement makers, under suspicion of illegal cartel activity.

*(Source: FT, 26.05.2009 –CUTS C-CIER ReguLetter Volume 10, No.2/2009)*

### Microsoft hit by record fine in Germany

Microsoft Germany has been hit with a US$ 13 million fine, after being found guilty of illegal business practices. The fine was imposed by the German competition authority, the Bundeskartellamt, following a ruling that Microsoft had illegally fixed price with retailers for the office Home and Student 2007 package.

"The product in question was heavily advertised in the autumn of 2008 in stationery retail outlets. Among others, a nation-wide active retailer advertised the product with financial support from Microsoft", said the Bundeskartellamt.

It is not illegal for some contact to take place between the producer and retailer, but it is against German Law for the seller to agree on future actions by the retailer. Microsoft has accepted the fine and will pay it shortly.

*(Source: www.vnunet.com, 09.04.2009 –CUTS C-CIER ReguLetter Volume 10, No.2/2009)*

## *Cartels*

### Brussels to probe Airlines Alliances

European competition authorities launced an investigation into alliances between some of the world's biggest airlines amid fears that some carriers could be planning to operate illegal cartels on transatlantic routes.

The move covers a set of agreements between Air Canada, Continental Airlines, Lufthansa and United Airlines – all members of the Star alliance – and, separately, between American Airlines, British Airways and Iberia, which belong to the One world alliance.

Its inquiry would consider whether there were offsetting consumer benefits generated by the co-operation and stressed that the fact of the probe did not prejudge the conclusion. British Airways said the move was not unexpected.

*(Source: FT, 20.04.2009–CUTS C-CIER ReguLetter Volume 10, No.2/2009)*

### SA Airways faces fine of millions

South African Airways could be fined millions of rands for its alleged role in an international price- fixing cartel. It is one of several airlines under investigation by authorities in the US, the EU, Australia and Switzerland.

In June 2008, the US Associate Attorney General, Kevin O'Connor, said that the cartel had cost consumers hundreds of millions of dollars between 2001 and 2006. O'Connor said that, in some instances, airlines had raised fuel surcharges by 1000 per cent. According to O'Connor, airline executives met repeatedly in the US, Europe and Asia to arrange a price-fixing scheme that raised cargo rates, fuel surcharges and security costs for business.

*(Source: ILO, 28.04.2009 –CUTS C-CIER ReguLetter Volume 10, No.2/2009)*

### Air cargo carriers agree to pay $ 124 million in criminal fines for participating in price fixing cartel in US

Three air cargo carriers i.e. LAN Cargo S. A. (LAN Cargo), Aerolinhas B rahsileiras S. A. (ABSA) and EL AL Israel Airlines Ltd. (EL AL) have agreed to plead guilty for their respective roles in the conspiracy to fix prices in the air cargo industry. They have agreed to pay criminal fines amounting to $ 124.7 million. These airlines were charged with participating in price fixing conspiracies with co-conspirators by:

- Participating in meetings, conversations and communications in the United States and elsewhere to discuss the cargo rates to be charged on certain routes to and from the United States;

- Agreeing, during those meetings, conversations and communications on certain components of the cargo rates to charge for shipments on certain routes to and from the United States;
- Levying cargo rates in the United States and elsewhere in accordance with the agreements reached; and
- Engaging in meetings, conversations and communications in the United States and elsewhere for the purpose of monitoring and enforcing adherence to the agreed-upon cargo rates.

A total of 12 airlines and three executives have either pleaded guilty or agreed to plead guilty in pursuance of the Justice Department's ongoing investigation in the air transportation industry. As on date, fines to the tune of $1 billion have been imposed and the guilty executives have been sentences to serve a total of 20 months in jail.

*(Source: Competition Law Reports -Manupatra)*

### Dawn Raids on Fruit and Vegetable Companies- in Netherlands

The Competition Authority of Netherlands recently carried out dawn raids on several companies active in the fruit and vegetable sector to collect information on suspected price fixing and information exchange. The European Commission was not involved in the raids.

More and more roads appear to lead to the authority as it taps new sources of information on possible competition law infringements through cooperation with other competition authorities and the public prosecutor. The authority was tipped off by the Fiscal Information and Investigations Service, which found cartel-related documents during its investigation.

*(Source: ILO, 17.09.2009 )*

### Microsoft-Yahoo deal in USA


After a failed takeover attempt of Yahoo last year, on 29th June, 2009, Microsoft announced that the companies had reached an agreement regarding searches and advertisements on the internet. Under the agreement, Microsoft will provide the underlying search technology on Yahoo's Websites while Yahoo will take exclusive charge of search-related ads for both companies.

The deal, which is aimed at taking on undisputed market leader Google, is however, unlikely to canter through a regulatory review by the DOJ. The new Obama administration has repeatedly indicated its intention to actively enforce the antitrust laws, particularly in relation to mergers and joint ventures.

The agreement is also likely to be given an extensive review by the European Commission, which has been much more aggressive in this area than their US counterparts under the former Bush administration. With approximate 65-70 per cent share in the online search-advertisement market, Google are miles ahead of its nearest competitor Yahoo, with Microsoft coming in third. Together, Yahoo and Microsoft have about 20-25 per cent of the market.

Traditionally, antitrust law and policy is titled against allowing market players 2 and 3 joining hands, the companies will need to prove that Microsoft-Yahoo tie up will in fact enhance competition in the search-advertisement market and thereby benefit consumers in the long run.

*(Source: Competition Law Reports -Manupatra)*

## COMING EVENTS

CCH - a Wolters-Kluwer business group and well known publishers of legal books - are planning to hold a one-day Seminar on competition law with Vaish Associates, Advocates as Knowledge Partners. Details are being worked out.

**Introducing the Team Leader of our Competition Law Practice:**

Mr. M. M. Sharma, Advocate, has joined the Firm as "Head –Competition Law and Policy". Mr. Sharma brings with him over 25 years of experience in the field of law, including the required expertise in this new area of law, having worked in the Competition Commission of India (CCI) where he was actively involved in drafting most of the Regulations under the Competition Act. Besides being a law graduate, he has to his credit the prestigious Post Graduate Diploma in *"Economics for Competition Law"* from Kings College, London. Mr. Sharma also has few publications on competition issues to his credit and is invited frequently to speak on competition law and policy.

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