

# Competition Law Bulletin



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## From the Editor's Desk...

Dear Reader,

In accordance with the mandate, the Competition Commission of India (CCI) continues with its tirade against anti-competitive business practices. During this quarter, an important administrative development that took place in the CCI which deserve mentioning was the election of Mr. Ashok Chawla, Chairman, CCI, to chair the 12th session of Intergovernmental Group of Experts (IGE) on Competition law and policy, UNCTAD in Geneva.

In order to fulfill its mandate more effectively, CCI has also constituted an "Eminent Persons Advisory Group", to give broad input and advice on larger issues impacting markets and competition, good international practices, improved advocacy etc. Recently, CCI has signed a Memorandum of Understanding on antitrust cooperation with the US Federal Trade Commission and the US Department of Justice, Antitrust Division, to cooperate on competition law investigations which allow the CCI and the US antitrust authorities to share information on investigations and consult each other on enforcement and policy issues.

Continuing with its objective to enforce competition law, CCI has started investigation in several sectors including investigation against 70 Real Estate developers and 17 foreign car makers across India. CCI has also received preliminary information from CUTS International against a global potash cartel operated by seven foreign companies.

CCI has also pronounced two important decisions relating to abuse of dominance. In the first decision, CCI heavily fined the Multi System Operators in the State of Punjab for abusing their dominant position. In the second decision, CCI closed information filed by a private train operator against the Indian Railways for allegedly abusing its dominant position. Incidentally, the above decision of CCI closing Information after the DG found evidence of abusing its dominant position during the investigation thus a violation is not the first of its kind and such orders of CCI have earlier as well evoked a debate, particularly, in view of the dissenting orders passed, almost repeatedly in each of such cases. Under the present scheme of the Act, CCI has no such powers to close Information at this stage. A brief summary of both the cases as stated above is featured in our 'special feature' section.

On October 4, 2012, the Union Cabinet has approved the proposal of the Ministry of Corporate Affairs to further amend the Competition Act, 2002, with a view to fine tune it and to meet the present day needs in the field of competition, along with other proposed amendments in the Merger Control provisions, in the light of the experiences gained in the actual working of the Competition Commission of India in the last few years. The CCI order against tyre makers and BCCI are being eagerly awaited.

We have also captured important international developments in the field of Competition Law. We hope that we will continue to receive your valuable patronage.

Yours truly,

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#### Seminars & Conferences

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## INDIAN-PERSPECTIVE

### SPECIAL FEATURE

#### CCI imposes ₹ 8 Crores fine on Multi System Operators Group for abusing dominant position

CCI on July 3, 2012 in the case of *M/s Kansan News Pvt. Ltd. v. M/s Fastway Transmission Pvt. Ltd. & Ors* imposed a penalty of ₹ 8.40 crore on the Group entities of Fastway Group i.e. M/s Fast Way Transmission Pvt. Ltd. M/s Hathway Sukhamrit Cable & Datacom Pvt. Ltd. and M/s Creative Cable Network Pvt. Ltd. at the rate of 6% of their average turnover for the last three preceding financial years for abusing its dominance in the cable TV service area in the territory of Punjab and Chandigarh in violation of Section 4 of the Competition Act, 2002 (the Act). The Commission has while levying the penalty also directed that the contravening entities should immediately 'cease and desist' from indulging in anti-competitive practices which have the effect of denial of market access. Full text of the Order can be seen on the CCI website: [www.cci.gov.in](http://www.cci.gov.in)



#### Facts of the Case

- The matter pertains to the information received from M/s Kansan News Private Limited (hereinafter referred to as the "informant") on July 18, 2011 under Section 19(1) (a) of the Act for alleged infringement of provisions of section 3 and section 4 of the Act.
- The M/s Kansan News Private Limited ("Informant") is broadcaster of a news and current affairs TV channel known as 'Day and Night News' and is operating in the states of Punjab, Haryana, Himachal Pradesh and Union Territory of Chandigarh. The Opposite Parties i.e. M/s Fast Way Transmission Pvt. Ltd., M/s Hathway Sukhamrit Cable & Datacom Pvt. Ltd. and M/s Creative Cable Network Pvt. Ltd. are the Multi System Operators ("MSOs") ("Fastway Group or Opposite Parties").
- The Informant alleged that the Opposite Parties controls over 95 % of the cable network distribution system in the State of Punjab and Union Territory of Chandigarh. The Informant cited the India

Leadership Survey Report, which states that in the State of Punjab there are 43.18 lacs television viewer households, out of which approximately 35 lacs television viewer households have cable connections which are primarily provided by the Opposite Party and is closely affiliated politically with ruling dispensation in the State of Punjab and has virtually finished and/or bought over all small cable operators and have taken the control of the cable network distribution business in Punjab.

#### Allegations by Informant

- Any broadcaster who wishes to telecast and access the viewers in the State of Punjab has no other option but to approach the Opposite Parties as they virtually control the entire cable network.
- Opposite Parties has substantial market share in the cable network distribution system in the state of Punjab and the Union Territory of Chandigarh. The Opposite Parties as a group have formed cartel and are abusing their dominant position by acting in an illegal, arbitrary and discriminatory manner, controlling the services of transmission and broadcasting of Television channels in the State of Punjab and Union Territory of Chandigarh, resulting in denial of market access to its channel, thus, violating section 4 of the Act.
- The Informant further alleged that the obstructions/ interruptions that caused interference with transmission of Informant's channel were deliberate, conscious and was done with oblique motives to harass the informant and to compel it to follow the dictates of OP in regard to non-telecast/non-coverage of news which are not in favour of the present ruling political party of Punjab.

#### Director General's (Investigation) Report

CCI after forming a *prima facie* view directed the matter for DG investigation. The DG after conducting an in-depth investigation of various allegations made in the information held that the conduct of Fastway group clearly shows that it has eliminated competition from the relevant market and affected the market in its favour.

## Issues and finding of the Commission

**Issue 1:** what ought to be the relevant market in the case?

**Finding of CCI:** The Commission held the cable TV service in the territory of Punjab and Chandigarh as the relevant market in the case. CCI observed that due to different product characteristics, the cable TV systems are different from the DTH or other platforms like IPTV etc. Thus the relevant product market should be Cable TV service. CCI further held that due to the factors such as local specification requirements, consumer preferences communication language, distributing network, the territory of Punjab and Chandigarh is the relevant geographic market

**Issue 2:** Whether the Opposite Parties are dominant in the relevant market?

**Finding of CCI:** The Commission observed that due to its huge market share, size, resources and market structure, the Opposite Parties Group are able to operate independent of the competitive forces in the market. The Opposite Parties Group is a dominant player in the relevant market on account of its market share, market power and its ability to operate independent of competitive forces as well as to affect the competitors, consumers and the relevant market in its favour as per *Explanation* to section 4 read with section 19(4) of the Act.

**Issue 3:** Whether the Opposite Parties have abused their dominant position?

**Finding of CCI:** On the issue of denial of market access, CCI observed even after payment of placement and carriage charges, transmission of the channel was disrupted and later terminated. Negating the argument of Operators that the reason for termination was low TRP of the Channel, CCI noted that the TRP ratings of the Channel as mentioned by DG in its report were in the range of 3-7, which was almost equal to some other channels. The subscriber base of the Operators was more than 40 lakhs, so the Operators were in a position to affect the market in their favor and used this position to deny the opportunity for transmission to the Channel.

**Issue 4:** Whether the Opposite Parties have violated the

provisions of section 3 of the Act as has been alleged by the informant?

**Finding of CCI:** CCI held that as the Operators were of the same group, so there cannot be a case of cartelization of the nature mentioned in section 3(3) of the Act.

## Order of the Commission

CCI held that the Fastway Group has abused its dominant position in the relevant market contravening Section 4 of the Act. CCI imposed a penalty of ₹ 8.40 crore at the rate of 6% of their average turnover for the last three preceding financial years. The Commission has also directed that the contravening entities should 'cease and desist' from indulging in anti-competitive practices which have the effect of denial of market access.

## CCI clears abuse of dominance charges against Indian Railways



The Competition Commission of India ("CCI") by way of order dated September 14, 2012 in *Arshiya Rail Infrastructure Limited v. Ministry of Railway & Ors*<sup>1</sup> had disposed three separate information's with similar and related issues, filed by Arshiya Rail

Infrastructure Limited ("ARIL") and KRIBHCO Infrastructure Limited ("KRIL") (collectively referred to as "Informant Operators") against the Ministry of Railways ("MoR") and Container Corporation of India ("CONCOR") for the violation of section 3 and 4 of the Act. Full text of the Order may be seen on the CCI website: [www.cci.gov.in](http://www.cci.gov.in)

## Facts of the case

- In February 2005, MOR and Government of India allowed private operators to run container trains on the Indian Railways network and decided to open rail container freight segment to private parties under Public Private Partnership ("PPP") model.
- Pursuant to the PPP policy and Rules, a Model Concession Agreement ("Concession Agreement")

<sup>1</sup> Case No: 64/2010



was drafted for execution between MOR and Private Container Train Operators ("PCTOs"), which guaranteed, among other things; (a) non-discriminatory access to the rail network including rail terminals, (b) non-discriminatory access to PCTOs trains on networks not owned by MOR (i.e. private sidings), (c) uniform haulage charges to be levied on non-discriminatory basis and not to be revised more than twice a year; and (d) level playing field for all concessionaires. Subsequently, licenses were issued to eligible parties to operate container trains on Indian Railways network. AIRL and KRIL were issued such category I licenses.

## Allegations by Informant

- Exclusionary non-price conduct / discrimination in violation of Sections 4(2)(a)(i), 4(2)(b)(i) and 4(2)(c) of the Act : Informant Operators alleged that by letter dated October 11, 2006 MOR brought ores, minerals, coal and coke under category of restricted commodities for rail freight transportation. As a result, market access was denied to PCTOs to the extent of 60-65% of the freight traffic on rail. Later, Indian Railways without any justification, increased haulage and other charges payable by PCTOs.
- Unfair trade conditions in violation of Sections 4(2) (a) (i) and 4(2)(c) of the Act: Informant Operators alleged that Indian Railways had unsettled the level playing field between CONCOR and other PCTOs by giving land to CONCOR at favorable terms and conditions. It was also alleged that PCTOs were denied access to the terminals and sidings owned and exclusively used by CONCOR, which lead to the increase in the cost of operations of PCTOs.
- Exclusionary price discrimination/exploitative pricing (unfairly high prices) and exclusionary pricing (margin squeezing) in violation of Sections 4(2) (a) (ii) and 4(2) (c) of the Act: Informant Operators contended that by increasing haulage charges on containers, MOR had put PCTOs in a disadvantageous position vis-à-vis wagon transportation.

- Imposition of supplementary obligation in violation of Sections 4(2) (d) of the Act: Informant Operators alleged that by Concession Agreement, PCTOs were obligated to get maintenance of private railway rakes only from MOR on payment basis. Informant Operators alleged that this amounts to a supplementary obligation, which restricts competition in the derivative aftermarket.

## Director General's (Investigation) Report

CCI after forming a *prima facie* view directed the matter for DG investigation. The DG after conducting an in-depth investigation of various allegations made in the information held that that Indian Railway is a dominant enterprise in the relevant market of '*transportation of goods/freight (either through wagons or containers) on the Rail Network (as defined in the concession agreement)*' and the conduct of MOR through Railway Board in the relevant market has been in violation of Section 4 of the Act.

## Issues and finding of CCI

**Issue 1:** Arbitration Agreement and Sovereign function.

**Finding of CCI:** On the jurisdiction issue, CCI observed that the circulars issued by MOR prescribing rates were in the nature of commercial activity and therefore cannot be called sovereign function and on the issue of arbitration agreement, CCI observed that the arbitration agreement only covered the contractual obligations assumed by the parties and does not address the competition issues brought before CCI.

**Issue 2:** Having regard to the complexities of freight movement, what are the critical parameters for defining the relevant market? What, therefore, is the relevant market in the present case?

**Finding of CCI:** CCI while defining the relevant market observed that the goods are loaded either in a wagon or in a container and at a broad level this could be acceptable. However, logistics management points to a clear cut distinction between the two and noted that in the parlance of logistics, container-freight refers specifically to high value non-bulk goods. Containers allow easy and flexible handling of non-bulk goods from point of production to

point of consumption and, are therefore, preferred by transporters and consignors. Furthermore, where transshipment of cargo is required, container is the only option. Wagons do not meet these conditions, as they cannot be taken off rails. Therefore, CCI held that classifying wagon and container in the same category will be inappropriate. Hence, CCI held that the relevant market in the present case is the *transportation of containers within the boundaries of India*.

**Issue 3:** In the market so defined, is there any dominant enterprise that enjoys a position of strength to enable it to 'operate independently of competitive forces'?

**Finding of CCI:** CCI relied upon the RITES report of 2005 and Comptroller and Auditor General of India's (CAG) report of 2010-11 for deciding the dominance of the Indian Railways in the relevant market and observed that container freight is largely carried on roads. Therefore, Indian Railways and CONCOR are not in a dominant position in the relevant market.

**Issue 4:** Whether the dominant enterprise as established above has abused its position to the detriment of competition?

**Findings of CCI:** CCI held that as the dominant position of Indian Railways and CONCOR could not be established under the relevant market, they could not have abused their position. Nonetheless, CCI decided to examine whether the market is constrained by any of the actions of Indian Railways as infrastructure provider.

✧ **Prohibition from movement of coal, coke, ores and minerals by PCTOs**

CCI observed that bulk freight is normally transported in wagons, while non-bulk high value goods are transported in containers. CCI accordingly held that as restricted commodities (like coal, coke ore and minerals) form part of bulk goods, which is transported in wagons, the plea that Informant Operators' market access has been denied does not stand.

✧ **Increase in hauling charges**

CCI held that the comparison of rates between

wagons and containers on rail is inappropriate. CCI further observed that setting excess charges was a tariff matter, which is outside the purview of CCI.

✧ **Unfair trade conditions in violation of sections 4(2)(a)(i) and 4(2)(c) of the Act**

CCI observed that CONCOR was established for the purpose of facilitating primarily export import container movement and providing other logistics like one-window custom clearing, Inland Container Depot (ICD) and Container Freight Station (CFS) etc and Indian Railways provided it with surplus land on terms, which were now being termed as unsettling the level playing field. CCI noted that in case of scarce natural resource, any company that is a pioneer will enjoy substantial cost benefits with passage of time.

On the contention of denying access to PCTOs in CONCORs terminals, CCI opined that there were no technical, legal or even economic reasons as to why other PCTOs should not be creating their own terminals or similar facilities. Even under Indian Railways (Permission for operators to move container trains on Indian Railways) Rules, 2006, model concession agreement and Gazette Notification No. 458 dated September 26, 2006, PCTOs were obligated to build their own terminals at their cost.

✧ **Imposition of supplementary obligation in violation of Section 4(2) (d) of the Act.**

The CCI observes that even if maintenance is a different market the maintenance of rakes by railways is dictated by considerations of safety and security which is entirely the responsibility of the railways. On grounds of safety, it is not a competition issue

**Final Order of CCI**

The CCI held that Indian Railways is not a dominant player in the relevant market and accordingly finds no abuse of dominance with regard to the allegation pertaining to any violation of Section 4 of the Act.

**CCI passes orders for closure of certain matters**

CCI has passed orders on closure of 177 cases of Information's filed under the Act and 36 cases of investigations transferred from the Director General of

Investigation & Registration (DGIR) and the COMPAT. The full texts of the said orders are duly displayed on its website.

## **CCI approves twenty more 'Combinations' within 30 days**

Keeping its promise of fast track clearance of combinations under merger regulations, CCI has approved 20 Combinations between July 2012 – September 2012, 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. Full Text of the Orders can be viewed on the CCI website [www.cci.gov.in](http://www.cci.gov.in).

## **Media Updates**

### **CCI in talks with other competition regulators on framing penalty guidelines**

The Commission is in internal discussions with other competition authorities worldwide to frame guidelines relating to the calculation of penalties in Competition cases. According to media report, some foreign laws firms are assisting CCI on the same. It is to be noted that most of the cases where penalties have been imposed by CCI are appealed before Competition Appellate Tribunal ("COMPAT") on the penalty issue.

(Source: *The Financial Times*, July 3, 2012)

### **CCI imposes ₹ 397 cr fine on Shree Cement**

CCI on July 30, 2012 in *re: Alleged Cartelization by Cement Manufacturers (RTPE-52/2006)* passed its final order against M/s Shree Cement Limited imposing penalty at the rate of 0.5 times of its profits for the years 2009-10 and 2010-11 aggregating to ₹ 397.51

crores for violating Section 3 of the Act. While imposing penalty, the Commission has considered the parallel and coordinated behavior of cement companies on price, dispatch and supplies in the market. The Commission has found that the cement companies have not utilized the



available capacity so as to reduce supplies and raise prices in times of higher demand.

(Source: *The Press Information Bureau*, July 30, 2012).

### **CCI issued notice to 17 car makers for violation of Competition Act**



CCI has issued notice to 17 car maker for alleged violation of Competition Act. The notice was issued after the DG found that the

car makers have held their customers captive by forcing them to get their vehicles repaired/serviced only from their dealers. The DG has also found that margins in some spares run as high as 1000%, especially for the imported ones. These car makers have scuttled all alternative supplies to the open market and also prevented their component suppliers from selling independently.

(Source: *The Economic Times*, September 19, 2012).

### **CUTS filed preliminary information report (PIR) against global potash cartel**



CUTS International has filed a PIR with the CCI against a global potash cartel operated by seven foreign companies. In its preliminary report submitted to CCI on August 25,

2012, CUTS International alleged that India is dependent on imports for its potash nutrient requirement. It imports entire requirement of over six million tonnes. It further alleged that, Indian companies have been bargaining hard for reduced prices for potash. Potassium is a one of the key fertilizers used in food production and is therefore severely impacted by the high prices of potash determined by the global cartel.

(Source: *The Hindu*, August 25, 2012).

### **COMPAT sets aside ₹ 72.5 lacs CCI penalty on Kingfisher Airlines**

COMPAT on August 29, 2012 has set aside a penalty imposed by CCI on Kingfisher Airlines, which was charged with not furnishing certain information during a probe into a strategic pact announced with Jet Airways in 2008. The Tribunal observed that the CCI had acted beyond



its scope in the matter and set aside the penalty. The Tribunal further held that the CCI itself had also kept the matter in abeyance and had termed the letters it sent to Kingfisher for required information as "reminder" notices.

(Source: *The Moneycontrol.com*, August 31, 2012).

## **Election of CCI Chairman as Chair of UNCTAD's IGE on Competition law and policy**

Mr. Ashok Chawla, Chairman, CCI has been elected unanimously the chair of the 12th session of Intergovernmental Group of Experts (IGE) on Competition law and policy, UNCTAD in Geneva. His name was proposed by the Chairperson of Competition Commission of Pakistan. UNCTAD's Intergovernmental Group of Experts (IGE) on Competition Law and Policy is a specialized intergovernmental forum based on consensus building and voluntary cooperation for developing countries' competition authorities and government agencies.

(Source: *The Press Information Bureau*, July 9, 2012).

## **CCI imposed penalty on Chemist & Druggist Association, Baroda ("CDAB")**

CCI on September 05, 2012 in *Vedant Bio Sciences v. Chemists & Druggists Association of Baroda* imposed a penalty of ₹ 53,837 at the rate of 10% on the average of the income for financial years 2006-07, 2007-08 on CDAB for violating Section 3 of the Competition Act, 2002. CCI has directed CDAB and its members to cease and desist from indulging in and following practices which have been found anti-competitive in violation of Section 3 of the Act. The CDAB has been further directed to file an undertaking that practices with respect to fixing of trade margins of pharma products, non-appointment of stockiest of wholesaler from amongst the non-members of the CDAB, requirement of NOC from CDAB for appointment of stockist of wholesaler and limit on number of stockiest of pharmaceutical companies have been done away within 90 days from the date of receipt of the order.

(Source: *The Press Information Bureau*, September 06, 2012).



## **CCI investigating 70 real estate companies for alleged cartelization**

CCI is investigating around 70 real estate developers around the country, including Unitech, Parsvnath Developers and Omaxe as well as several big builders in Delhi and Mumbai, for entering into one-sided agreements with buyers and for allegedly colluding with each other to arm-twist them. The Commission has asked its director-general to investigate a number of practices that real estate developers follow, such as announcing projects before getting all approvals from authorities and not revealing all applicable costs to buyers at the time of purchase, said the official. It will also look into one-sided clauses through which a developer can delay completion of projects, increase or decrease the size of apartments, and change building plans mid-way through projects.

(Source: *The Economic Times*, September 13, 2012).

## **Prasar Bharati contemplating to move CCI against TAM**



Prasar Bharati is contemplating to move CCI against Television Audience Measurement (TAM), citing monopolistic practices and inaccurate representation of data on Doordarshan's coverage. TAM India is a joint venture between Nielsen and Kantar

Media. Prasar Bharati recently got a nod from its board members, to move the CCI against TAM. TAM's ratings have been already in trouble with NDTV filing a lawsuit against the agency.

(Source: *The Business Standard*, September 26, 2012).

## **US antitrust agencies signs Memorandum of Understanding with CCI**

The U.S. Federal Trade Commission and the Department of Justice signs an antitrust memorandum of understanding ("MOU") with the Government of India, Ministry of Corporate Affairs and the CCI to promote increased cooperation and communication among competition agencies in both countries. The MOU was signed by FTC Chairman Jon Leibowitz, Acting Assistant Attorney General Joseph Wayland of the Department of Justice's

Antitrust Division, Indian Ambassador to the United States Nirupama Rao on behalf of the Indian Ministry of Corporate Affairs and CCI Chairman Ashok Chawla.

Key provisions of the MOU address the following:

- **Cooperation** - The MOU provides that the U.S. antitrust agencies and Indian authorities will work to keep each other informed of significant competition policy and enforcement developments in their jurisdictions, and establishes a framework for technical cooperation. The MOU also recognizes that when the U.S. and Indian competition agencies are investigating related matters, it may be in their common interests to cooperate.
- **Communication** - The MOU establishes a framework for the U.S. antitrust agencies and the Indian competition authorities to consult on matters of competition enforcement and policy. It also contemplates periodic meetings among officials to exchange information on policy and enforcement priorities.

(Source: The Federal Trade Commission, September 27, 2012)

## **COMPAT dismissed an appeal filed by Travel Agents Association of India (TAAI) against CCI Order**

COMPAT vide an order dated September 26, 2012 in *Travel Agents Association of India v. Balmer Lawrie & Co. & Ors.* dismissed an appeal filed by TAAI against an order of CCI. The case relates to an office memorandum issued by the Ministry of Finance in March 2006, asking Government officials to purchase travel tickets/tour exclusively from Balmer Lawrie & Co or Ashok Travels and Tours Ltd. COMPAT uphold the CCI order stating that in so far as the contention that the government memorandum was in nature of anti-competitive agreement, the finding of the CCI is correct that the said government memorandum does not amount to an agreement. COMPAT further stated that it is an internal administrative decision to deal with a particular agency in the matter of securing air tickets. On the issue of dominance, COMPAT while upholding the CCI order held that the government cannot be said to be a dominant enterprise in the relevant market and CCI is right in holding that the government is a consumer in the

relevant market for procuring the air tickets for domestic air travel merely because the government officials purchase large number of tickets.

(Source: Competition Appellate Tribunal, September 26, 2012)

## **COMPAT DECIDES PENDING MRTTP MATTERS**

COMPAT continues to decide the pending cases under the repealed MRTTP Act. As per information received from the COMPAT, it had disposed of 1953 cases till September 30, 2012 as per details below:

RTP cases	292
UTP cases	886
Compensation cases	762
MTP cases	09

## **INTERNATIONAL NEWS**

### **European Union**

#### **European Commission sends Statement of Objections to suspected participants in retail food packaging cartel**



European Commission (EC) has informed thirteen companies active in the production and/or distribution of retail food packaging of its

preliminary view that they may have participated in a cartel in the European Economic Area (EEA) for up to eight years, in breach of EU antitrust rules. EC has sent a statement of objections to manufacturers or distributors of polystyrene foam trays and polypropylene rigid trays. EC has concerns that these companies may have engaged in price fixing, market sharing, customer allocation, exchanges of commercially sensitive information and bid-rigging, in breach of Article 101 of the Treaty on the Functioning of the European Union (TFEU) that prohibits cartels and restrictive business practices.

(Source: European Commission: Press Release dated September 28, 2012)

#### **EC opens proceedings against Gazprom**

EC has opened formal proceedings to investigate whether gazprom, the Russian producer and supplier of natural



gas, might be hindering competition in central and eastern European gas markets, in breach of EU antitrust rules.



EC has concerns that gazprom may be abusing its dominant market position in upstream gas supply markets in central and eastern European member states, in breach of article 102 of the TFEU. EC is investigating three suspected anti-competitive practices in central and Eastern Europe. First, gazprom may have divided gas markets by hindering the free flow of gas across member states. Second, gazprom may have prevented the diversification of supply of gas. Finally, gazprom may have imposed unfair prices on its customers by linking the price of gas to oil prices.

*(Source: European Commission: Press Release dated September 4, 2012)*

## **EC opens in-depth investigation into proposed acquisition of Aer Lingus by Ryanair**

EC has opened an in-depth investigation (phase II) under the EU Merger Regulation into the proposed acquisition of Aer Lingus by the low cost carrier Ryanair,



which was notified to the EC on July 24, 2012. EC's preliminary investigation into the proposed takeover, which takes the form of a public offer, indicated potential competition concerns. On a large number of European routes, mainly out of Ireland, the two airlines are each other's closest competitors and barriers to entry appear to be high. Many of these routes are currently only served by the two airlines.

*(Source: European Commission: Press Release dated August 29, 2012)*

## **EC opens proceedings against suspected participants in several cartels for the supply of automotive wire harnesses**

EC has opened an investigation into suspected cartels for the supply of automotive electrical distribution systems, also known as wire harnesses, in the European Economic Area. This case is part of a wider effort to investigate possible cartels in the automotive sector. In February 2010,

EC carried out inspections at the premises of a number of wire harness producers.

*(Source: European Commission: Press Release dated August 09, 2012)*

## **EC sends Statement of Objections to Lundbeck and others for preventing market entry of generic antidepressant medicine**



EC has informed the Danish pharmaceutical company Lundbeck of its objections regarding agreements concluded with four generic

competitors concerning citalopram, a blockbuster antidepressant. EC is of the preliminary view that the agreements aimed at preventing the market entry of cheaper generic medicines, in violation of EU antitrust rules. The Statement of Objections is also addressed to Merck KGaA, Generics UK, Arrow, Resolution Chemicals, Xellia Pharmaceuticals, Alpharma, A.L. Industrier and Ranbaxy, which belonged to the generic groups that concluded the agreements.

*(Source: European Commission: Press Release dated July 25, 2012)*

## **EC sends Statement of Objections to suspected participants in a cartel for the supply of computer CD and DVD drives**

EC has informed thirteen companies supplying optical disk drives in the European Economic Area of its preliminary view that they may have infringed EU antitrust rules by participating in a worldwide cartel. Optical disk drives read or write data on CDs and DVDs. EC has concerns that suppliers may have coordinated their behaviour in bidding events organised by two major original equipment manufacturers for optical disk drives used in personal computers (desktops and notebooks) and in servers.

*(Source: European Commission: Press Release dated July 24, 2012)*

## **EC opens in-depth investigation into proposed acquisition of TNT Express by UPS**

EC has opened an in-depth investigation under the EU Merger Regulation into the proposed acquisition of TNT Express of the Netherlands by the American company

United Parcel Service (UPS), both major players in the small package delivery sector. EC preliminary investigation indicated potential competition concerns in the markets for small parcel delivery services, in particular international express services, in numerous Member States, where the parties would have very high combined market shares.

*(Source: European Commission: Press Release dated July 20, 2012)*

## **EC opens proceedings against Microsoft for non-compliance with browser choice commitments**

The EC has opened proceedings against Microsoft in order to investigate whether the company has failed to comply with its 2009 commitments to offer users a choice screen enabling them to easily choose their preferred web browser.

EC believes that Microsoft may have failed to roll out the choice screen with Windows 7 Service Pack 1, which was released in February 2011.

*(Source: European Commission: Press Release dated July 17, 2012)*



## **Others**

### **United States**

## **Taiwan-Based AU Optronics Corporation Sentenced to Pay USD 500 Million Criminal Fine for Role in LCD Price-Fixing Conspiracy**

AU Optronics Corporation, a Taiwan-based liquid crystal display (LCD) producer, was sentenced today in U.S. District Court in San Francisco to pay a USD 500 million criminal fine for its participation in a five-year conspiracy to fix the prices of thin-film transistor LCD panels sold worldwide, the Department of Justice announced. Its American subsidiary and two former top executives were also sentenced today. The two executives were sentenced to serve prison time and to pay criminal fines for their roles in the conspiracy. The USD 500 million fines matches the largest fine imposed against a company for violating the U.S. antitrust laws.

*(Source: Department of Justice: Press Release dated September 20, 2012)*

## **United Kingdom**

### **New guidance on penalties for breaching competition law**

The OFT has published new guidance on how it will set penalties for breaches of competition law. The guidance will allow the OFT to continue to set substantial penalties to deter anti-competitive activity while ensuring that penalties are proportionate in the specific circumstances of individual cases. The new guidance sees the maximum starting point for penalty calculations increase to 30 per cent of relevant turnover, from 10 per cent. It brings the OFT in line with the approach of the EC and many European competition authorities. The guidance introduces a new step in the calculation of penalties. The OFT will consider specifically whether a penalty is proportionate 'in the round'. Previously proportionality was considered when applying the other steps of the calculation. This change is intended to ensure that; overall, penalties are not disproportionate or excessive in the particular circumstances of the case.

*(Source: Office of Fair Trading: Press Release dated September 10, 2012)*

### **Airlines to scrap debit card surcharges following Office of fair trading ("OFT") enforcement action**



Following OFT enforcement action, 12 airlines have agreed to include debit card surcharges in the headline price rather than surprise consumers at the end of the booking process. Any surcharges for paying by credit card will be easy to find when booking online. Aer Lingus, BMI Baby, Eastern Airways, easyJet, Flybe, German Wings, Jet2, Lufthansa, Ryanair, Thomas Cook, Thomson (TUI) and Wizz Air were subject to an OFT consumer law investigation and have agreed to change their practices. The OFT believes that people should not have to incur surcharges to use a debit card online. Debit cards are the online equivalent of cash which means that headline prices should be the price people can pay.

*(Source: Office of Fair Trading: Press Release dated July 5, 2012)*

## Germany

### German cartel office fines Siemens, ABB, and Alstom

The Bundeskartellamt has imposed fines amounting to a total of 24.3 million Euros on four manufacturers of power transformers. The four companies are ABB AG, Mannheim, Alstom Grid GmbH, Frankfurt am Main, Siemens AG, Munich, and Starkstrom-Gerätebau GmbH, Regensburg. From spring 1999 to March 2004, these companies were engaged in bid-rigging and market collusion, affecting the outcome of tenders at a number of utilities. The companies often met on the sidelines of German Electronics Association meetings in Frankfurt, for informal discussions on specific projects and tenders.

(Source: Bundeskartellamt: Press Release dated September 20, 2012)

### Haribo fined for anti-competitive exchange of information

Bundeskartellamt has imposed fines totalling approx. 2.4 million Euro on the confectionery manufacturer Haribo GmbH & Co. KG, Bonn and its sales representatives involved, for exchanging competitively relevant information. In 2006 and 2007 senior sales staff of the four companies involved regularly met for informal discussions. In so-called "four party talks", the responsible Haribo sales representative participated in the reciprocal exchange of information on the state of negotiations with various major retailers.



(Source: Bundeskartellamt: Press Release dated August 1, 2012)

### Bundeskartellamt imposes fines on manufacturers of automatic door systems

Bundeskartellamt imposed fines totaling approx. 2.4 million Euros on eight manufacturers of automatic door systems and their association, as well as one senior member of staff, on account of several illegal agreements. The agreements were partly concluded within the context of the association's activities and with the involvement of WIB staff, which as a consequence was fined as well. The proceedings were initiated in 2009, after an application for leniency by two other automatic door manufacturers, GU Automatic GmbH, Rheda-Wiedenbrück, and GU Service GmbH & Co. KG, Ditzingen, against which no fines were

imposed in accordance with the Bundeskartellamt's Leniency Program.

(Source: Bundeskartellamt: Press Release dated July 25, 2012)

### Federal Cartel Office imposes fines in rail case

Federal Cartel Office ("Bundeskartellamt") has imposed fines totalling 124.5 million euros on four rail manufacturers and suppliers for concluding anticompetitive agreements to the detriment of Deutsche Bahn AG. Orders imposing fines were served on ThyssenKrupp GfT Gleistechnik GmbH, Essen (103 million euros), Stahlberg Roensch GmbH, Seevetal, which since 2010 belongs to the Vossloh group (13 million euros), TSTG Schienen Technik GmbH & Co. KG, Duisburg, a subsidiary of the voestalpine group (4.5 million euros) and voestalpine BWG GmbH & Co. KG, Butzbach, another voestalpine subsidiary (4 million euros). Investigations into further companies are still ongoing. The proceedings were triggered by an application for leniency filed by the Austrian company voestalpine AG.

(Source: Bundeskartellamt: Press Release dated July 5, 2012)

## South Africa

### Competition Tribunal imposes R449 million penalties on Telkom for 'bullying' its competitors

Telkom SA Ltd. (TKG) was fined 449 million rand (USD 55 million) for abusing its dominance in South African telecommunications between 1999 and 2004, less than the 3.25 billion rand the Competition Commission had sought. The Competition Tribunal "concluded that Telkom leveraged its upstream monopoly in the facilities market to advantage its own subsidiary in the competitive value added network market."

(Source: The Competition Tribunal, South Africa: Press Release dated September 20, 2012).

## Canada

### Korean Air pleads guilty to Price-Fixing Conspiracy



The Competition Bureau fined Korean Air Lines Co., Ltd. (Korean Air) USD5.5 million for its participation in an air cargo price-fixing cartel between April 22, 2002 and February 14, 2006 in violation of the competition Act.



To date, the Bureau's air cargo investigation has resulted in seven convictions and fines of over USD22.6 million. Cargolux, Air France, KLM, Martinair, Qantas, and British Airways have pleaded guilty to fixing air cargo surcharges for shipments on certain routes from Canada. The Bureau's investigation into the alleged conduct of other air cargo carriers continues.

(Source: Competition Bureau, Canada: Press Release dated July 19, 2012)

## Pakistan

### Competition Commission of Pakistan imposes Rs 770 million fine on banks, 1-Link for cartelization

The Competition Commission of Pakistan has imposed a total penalty in the sum of PKR 770 M, including PKR 50 M on 1-Link (Guarantee) Limited and PKR 50 M each on its 11 founding member banks including Barclays Bank PLC Pakistan Limited and PKR 10 M on each of its 17 non-founding member banks for imposing uniform customer charges for Off-Us ATM cash withdrawal transactions in violation of Section 4 of the Competition Act, 2010.

(Source: Competition Commission of Pakistan: Press Release dated July 2, 2012)

## Seminars and Conferences

**MM Sharma** participated in the following Conferences/ Seminars, as a speaker:

- Addressed a session on "Observations on Abuse of Dominance" in a Conference on "Competition Law: Perspectives & Developments" organized by PHD Chamber of Commerce.
- Addressed the session on "Emerging implications of the new Competition Law in the Media Industry" in a Conference on "Media, Advertising and Entertainment Legal Summit, 2012" organized by Lex Witness.
- Addressed the session on "Abuse of Dominance- Some key aspects and issues" in a Conference on "Competition Law- from Curbing Monopolies to Promoting Competition" organized by Corporate Knowledge Foundation (CKF).



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