Competition News Bulletin

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Inside...

I. CARTELS AND ANTI-COMPETITIVE AGREEMENTS

INDIA

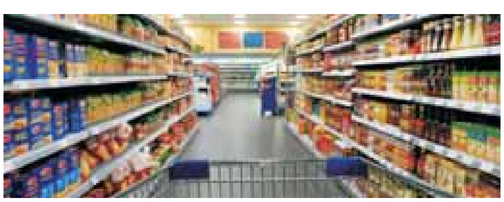
CCI exonerates Samsung from alleged anti-competitive practices

Competition Commission of India ("CCI") by way its order dated December 5, 2014 has exonerated Samsung India from the charges of unfair business practices with respect to sale and supply of spare parts and equipments of Samsung's mobile phones. An information was filed by a buyer of Samsung Galaxy S Duos with the CCI, alleging that the Authorized Service Centre gave him misleading information about the fault in the handset and quoted around ₹ 4502.90 as charges for replacement of the vibrator of his mobile. It was further alleged that Samsung by restricting sale and supply of genuine spare parts, diagnostic tools, equipments, technical information and know-how etc. has created a monopoly over supply of such genuine spare parts, diagnostic tools etc. and indirectly determining the sale price of the spare parts and repair and maintenance service charges. The repair, maintenance and servicing of such products could only be carried out at the authorized service centers of Samsung. Such restrictive practices adopted by Samsung in conjunction with their respective authorized service centers resulted in denial of market access to independent repair workshops in contravention of the provisions of section 3 and 4 of the Competition Act, 2002 (" the Act"). CCI, while rejecting the contentions raised by informant, observed that *"the Informant has not provided any material in order to substantiate his allegation that the restrictive practices adopted by the Opposite Parties in conjunction with their respective Authorized Service Centers results in denial of market access to independent repairers in contravention of the provisions of section 3 and/or 4 of the Act. The case was basically a dispute between a consumer and its service provider where consumer alleges deficiency in service being provided. The Commission is of the opinion that it does not involve any issue relating to competition which attracts the provisions of the Act".*

(Source: CCI order dated December 05, 2014)

International

French Competition Authority imposes fines on 13 consumer –goods makers for price fixing



The French Competition Authority has imposed a penalty amounting to €951.1 million ($1.17 billion) against 13 leading consumer goods manufacturers for indulging into collusive practices in the home and personal care product sectors ("Consumer Goods"), marking one of the "most significant" fines imposed by the authority. The *Autorite de la Concurrence* imposed the penalty for implementing "concerted practices" against 13 companies, including Procter & Gamble, Colgate-Palmolive Co., Unilever PLC, Henkel AG & Co., Reckitt Benckiser Group PLC, Hillshire Brands Co. and Bolton Manitoba SpA. The first infringement occurred in the market for home care products. Colgate-Palmolive, Henkel, Unilever, Procter & Gamble, Reckitt Benckiser, Sara Lee, SC Johnson and Bolton Solitaire participated at varying extents. They are fined a total of €345,2millions.The second infringement occurred in the market for personal care products. Colgate-Palmolive, Henkel, Unilever, Procter & Gamble, Reckitt Benckiser, Sara Lee, LaboratoiresVendôme, Gillette, L'Oréal, Beiersdorf and Vania participated at varying extents. They are fined a total of €605,9millions.The contravening companies coordinated their policies toward supermarkets in both the home and personal care markets between 2003 and 2006. The coordination was designed to decrease competition between the suppliers and align their positions in distributor negotiations. The manufacturers allegedly met with one another regularly to discuss their pricing policies and commercial policies, communicating during restaurant meetings, private home correspondence and phone calls. They allowed retailers to maintain artificially high selling prices, which were then passed on to end consumers. Raids during the investigation were conducted by the authority in February and July 2006, based on information received from SC Johnson, Colgate-Palmolive and Henkel which successively applied for leniency and it was found that the parties in the cartel used to hold regular meetings in lunch time at "Le Royal Villiers" restaurant in Paris and met regularly and secretly to coordinate their commercial policies and discuss their pricing policies.

Undertakings coordinated during meetings that took place in different "clubs" called "Teams" or "Friends", where commercial managers or sales managers met. The meetings took place in restaurants, in addition, they also exchanged correspondence at their private homes. These exchanges were supplemented by bilateral or multilateral contacts, including phone calls, which allowed companies to strengthen the exchanges initiated within the clubs.

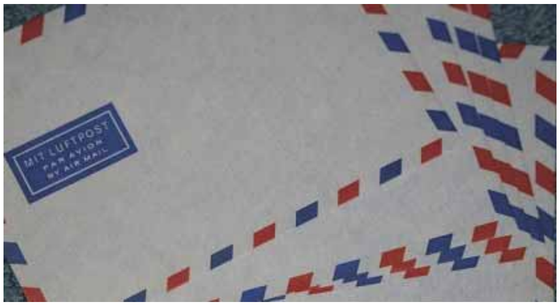
(Source: French Competition Authority Press Release dated December 18, 2014)

Australia: Australian Competition and Consumer Commission appeals air cargo cartel decision

The Australian Competition and Consumer Commission ("ACCC") has lodged a notice of appeal from the Federal Court's decision to dismiss the ACCC's proceedings against Air New Zealand Ltd (Air New Zealand) and PT Garuda Indonesia Ltd (Garuda) in relation to an alleged air cargo cartel. In its proceedings, the ACCC alleged that Air New Zealand and Garuda contravened the Trade Practices Act, 1974, now called the Competition and Consumer Act, 2010 (the Act), by fixing the level of various surcharges to be applied to air cargo services supplied by a number of airlines between 2001 and 2006.The trial judge concluded that although a number of the price fixing arrangements alleged by the ACCC were established which may have had an effect on prices in Australia, the cartel conduct did not take place in a "market in Australia" in which the airlines were competing, as was required by the Act at the time. ACCC's appeal is solely focused on the Court's finding that there was no 'market in Australia".

(Source: ACCC Media Release dated December 17, 2014)

European Commission: Commission fines five envelope producers in cartel settlement



The European Commission has fined Bong (of Sweden), GPV and Hamelin (both of France), Mayer-Kuvert (of Germany) and Tompla (of Spain) a total of €19 485 000 for coordinating prices and allocating customers of certain types of envelopes, exchanging commercially sensitive information in a series of meetings, in breach of EU antitrust law. Four of the companies involved, Tompla, Hamelin, Mayer-Kuvert and GPV, were each granted a reduction in their fines under the Commission's Leniency Notice. The fifth cartelist, Bong, did not benefit from leniency. Since all undertakings agreed to settle the case with the Commission, their fines were reduced by a further 10% each. Two of the companies also successfully invoked their inability to pay the fine and were granted a further reduction by the Commission after a detailed assessment of their financial positions. The infringement lasted from October 2003 until April 2008.

(Source: European Commission Press Release dated December 11, 2014)

European Commission: Lupin appeals against the fine imposed by European Commission in "Pay-For-Delay"

An appeal has been preferred by the Lupin Ltd. against the decision of European Commission, wherein, the Commission has imposed penalty for entering into "pay for delay" settlement agreements that breached Article 101 of the Treaty on Functioning of European Union ("TFEU"). Lupin agrued before the appellate court that the Commission erred in law in finding that Lupin had committed an infringement of Article 101 by object or by effect. Lupin further argued that the Commission applied "a wholly novel and incorrect legal test and has failed to recognize the objectives of competition and patent law while rendering its decision. In addition, the fine imposed by the Commission was too high and was unfair. In July 2014, the European Commission has imposed fines on French pharmaceutical company Servier and five generic drug makers, including Lupin Ltd., totaling €427.7 million. The fines were the result of a five-year investigation into alleged anti-competitive agreements that prevented generic versions of perindopril, Servier's best-selling blood pressure medication, from entering the market. Although several other companies have appealed their fines to the European Union's General Court, the General Court has not yet issued any decisions on these recent pay-for-delay fines.

(Source: Official General of European Union dated December 8, 2014)

European Commission: General Court rules on appeals against Commission's re-adoption of Italian concrete reinforcing bar cartel decision

The General Court has issued a number of judgments on appeals against the European Commission's re-adoption of the Italian concrete reinforcing bar cartel decision. Although the General Court dismissed most of the appeals, it considered that the Commission had failed to establish that two companies formed a single undertaking at the time of the decision and therefore failed to apply the 10% fine ceiling correctly. The General Court also reduced the fines imposed on two other companies, on the basis that the Commission did not take account of the period when these companies did not participate in the cartel.

(Source: http://curia.europa.eu/juris/documents.jsf?num=T-472/09)

Netherland: Authority for Consumer and Markets imposes fines on investment firms in cartel case

Authority for Consumers & Markets

The Dutch Authority for Consumer and Markets (ACM) in a press release dated December 30, 2014 has notified that ***"Investment firms that own businesses can be held accountable for violations of the Dutch Competition Act committed by those businesses, if the investment firms have decisive influence over them".*** This is one of the conclusions of a decision of the Netherlands Authority for Consumers and Markets (ACM) in the so-called 'Flour cartel.' Three investments firms are imposed fines, between 450.000 and 1, 5 million euro. This decision marks the first time that ACM fines investment firms.

ACM has previously already imposed fines on various companies that had been directly involved in the flour cartel. Between 2001 and 2007, these flour producers made mutual arrangements in order to keep prices stable. One of these arrangements was a non-aggression pact. In addition, several flour producers bought and subsequently dismantled an old flour mill in the Netherlands in order to reduce total production capacity. These flour producers had a combined market share of approximately 65 percent. At the time, the investment firms that have now been fined successively owned one of the producers involved.

Investment firms usually manage one or more funds. Funds hold shares of businesses, and these shares are usually resold after a while. However, ACM is of the opinion that investment firms, too, can be held responsible for the behaviour of the firms they own (through those funds), particularly if the investment firm in question has decisive influence. ACM has concluded that this was the case with the investment firms which have now been fined.

(Source: Authority for Consumer and Market News dated December 30, 2014)

Comment: *This decision by the Dutch Competition authority sounds a note of caution for Private equity investors in companies where they may not be involved in any anti-competitive conduct directly, but may get caught because of* *their ability to exercise some degree of influence in decision making. It sends a clear message that Private equity investors must ensure their investee companies comply with competition law.*

United States: Northern California real estate investor pleads guilty for bid rigging and fraud at public foreclosure auction

A Northern California real estate investor pleaded guilty for his role in bid rigging and fraud at public real estate foreclosure auctions in Northern California. The indictment alleged that Charles Rock and others agreed not to compete at public foreclosure auctions in Contra Costa County, California, and diverted money to themselves that should have gone to mortgage holders and other beneficiaries. Charles Rock pleaded guilty to one count of bid rigging and two counts of mail fraud. To date, 51 individuals have agreed to plead or have pleaded guilty as a result of the department's ongoing antitrust investigations into bid rigging and fraud at public real estate foreclosure auctions in Northern California.

(Source: The Department of Justice Press Release dated December 24, 2014)

US: Former Mitsuba executive agrees to plead guilty for bid rigging and price fixing on automobile parts installed in US cars

A former executive of Japan-based Mitsuba Corporation has agreed to plead guilty and serve 13 months in a U.S. prison for conspiring to fix the prices of products installed in cars sold in the United States and elsewhere. The said conspiracy was made during the period from or about June 2005 to in or about December 2009 by agreeing upon bids and prices for, and allocating the supply of, windshield wiper systems and starter motors sold to Honda Motor Co. Ltd. and its subsidiaries and affiliates in the United States and elsewhere. Further, the executive also has agreed to pay a $20,000 criminal fine and cooperate with the department's ongoing investigation. However, the plea agreement is subject to court approval.

(Source: The Department of Justice Press Release dated December 01, 2014)

II ABUSE OF DOMINANCE/MARKET POWER

India

CCI exonerates Nilpeter and SaiCom for alleged abuse of dominance

CCI by way of its order dated December 2, 2014 has exonerated Nilpeter India limited ("Nilpeter") and SaiCom Codes Flexo Print Pvt. Ltd. ("SaiCom") for alleged unfair business practices with respect to after sale service for Nilpeter brand of label printing machine FB-3300 Servo Flexo Printing Machine, by, inter alia, refusing to provide the service engineer/spare parts to the Informant on many occasions citing the reason that the Informant has started working for 'Patanjali' which is a big customer of the Opposite Party No. 4 and by refusing to enter into AMC with the Informant citing the reason that the Informant has started doing business with "Patanjali". CCI initially found that the information raised competition concerns prima facie and referred the matter to the Director General (DG) for investigation in to allegations of abuse of dominance position by Nilpeter and entering into anticompetitive agreement with SaiCom in violation of section 3(4) of the Act.

DG Investigation - DG investigation concluded that the conduct of the Opposite Party No. 1 in denying its service support to the Informant amounted to abuse of dominant position as per section 4(2) (a) (i) which inter alia includes directly or indirectly imposing unfair/discriminatory conditions in sale of service. Further, DG concluded that the agreement between Nilpeter and SaiCom being a vertical agreement for "refusal to deal" was causing appreciable adverse effect on competition in India in violation of section 3(4)(d) of the Act. Thus, DG concluded that the opposite parties had violated both section 3 and 4 of the Act.

CCI decision -CCI, on the basis of examination of statements recorded by the DG during investigation noted that the label printing machine which is subject matter of the present dispute appears is comparable and substitutable with the label printers manufactured by the competitors of Nilpeter such as Gallus India Private Limited; Flexo Image Graphics Pvt. Ltd.- representative of Mark Andy, USA; Reifenhauser (India) Marketing Ltd.- representative of Nuova Gidue SRL, Italy; Weldon Celloplast Limited-representative of Omet (Italy); and Genius Flexo Machinery Pvt. Ltd. and therefore the relevant product in the market in the present case may not be limited to servicing of Nilpeter FB 3300 Servo Flexo Printing Machines alone. Further, CCI noted that none of the spare parts used in the machine are manufactured by the Opposite Party No. 1 itself and the same are procured from OEMs. The Commission has also taken note of the submissions of the Opposite Parties that there are numerous freelance engineers/ISPs operating in the market which provide maintenance services for label printing machines. The Opposite Party No. 1's label printing machine is an assembly of 2556 components, procured from open market and put together to deliver an outcome of printing. That even before the Opposite Party No. 1 began operations in 2008, many Indian customers were using second hand Nilpeter machines imported from different sources and maintaining it with locally available spares. Thus, the machines can be easily serviced by any freelance engineer/ISPs and the spare parts of the machine are freely available in the local market, reflecting healthy competition in the aftermarket for servicing label printing machines and ISPs effectively countervail any anti-competitive behaviour of the Opposite Party No. 1.

CCI, while exonerating the opposite parties observed that Nilpeter cannot be said to be in a dominant position in the relevant market of servicing of Nilpeter machines, since there are freelance engineers/ independent service providers present who can easily service such label printing machines and, therefore, the issue of abuse of dominant position does not arise. With regards to the violation of section 3(4)(d) of the

Act, found by the DG, CCI held that the same was not tenable since the agreement between Nilpeter and SiaCom was not between enterprises at different stages or levels of the production chain in different markets, in respect of production, supply, distribution, storage, sale or price of, or trade in goods or provision of services, as required under the law but was an agreement between a buyer and a supplier, which was not covered under section 3(4) of the Act.

(Source: CCI order dated December 2, 2014)

International

Sweden: Swedish Competition Authority brings action against tobacco company Swedish Match for abuse of dominance

Swedish Competition Authority ("SCA") has summoned the tobacco company Swedish Match North Europe AB ("Swedish Match"), claiming approximately SEK 38 million in administrative fines for an alleged abuse of dominance. According to the SCA, Swedish Match has abused its dominant position on the Swedish snus market by applying strict rules for shelf labelling in their snus coolers. Swedish Match owns most snus coolers on the Swedish market and the competitors are normally dependent on placing their products in Swedish Match's coolers. Since June 2012, Swedish Match applied detailed and strict rules for shelf labelling in the coolers. Under the rules, the competitors needed to follow Swedish Match´s strict labelling guidelines or have their shelf labels exchanged for generic grey-and-white ones without any price information. According to the SCA, the labelling system has led to reduced price competition and worse conditions for expansion and entering into the market.

(Source: Swedish Competition Authority Press Release December 10,2014)

III. COMBINATION

India

Sun-Ranbaxy deal got conditional approval from CCI

CCI vide its order dated December 5, 2014 has conditionally approved the proposed merger between Sun Pharma and Ranbaxy (collectively called as "parties"), subject to the parties inter alia carrying out the divestiture of their products relating to seven relevant markets for formulations. This is the first time in the history of Indian Competition Law that CCI has ordered the sale of certain assets before approving a merger, wherein, parties have been directed to sell certain products before the merger can be made effective. After considering the response of both the parties to the show cause notice issued by CCI and the comments received from the members of the public on the proposed combination after the publication of details of the proposed combination by the parties, CCI noted that both the Parties are engaged in the manufacture, sale and marketing of various pharmaceutical products including formulations/medicines and active pharmaceutical ingredients (APIs), which constituted a separate relevant product market. Accordingly, CCI defined the relevant product market based on molecules, on the basis of substitutability, for each formulation. It was observed that there are horizontal overlaps between the parties in both the markets for formulations as well as APIs. Both the Parties are primarily generics manufacturers (i.e., producers of generic copies of originator drugs) with a small number of licensed molecules. On the basis of combined market share of the Parties, incremental market share as a result of the proposed combination, market share of the competitors, number of significant players in the relevant market, etc., the Commission focused its investigation on forty nine relevant product markets of formulations where the proposed combination was likely to have appreciable adverse effect on competition in the relevant market in India. In addition to these forty nine relevant product markets, the Commission also identified two relevant markets for formulations wherein Sun Pharma is already marketing and selling its products whereas Ranbaxy has pipeline products to be launched in the near future. As regards the horizontal overlap in the relevant product markets for APIs, CCI noted that both parties sell APIs to third parties and that the horizontal overlap in APIs was insignificant to raise any competition concern. Similarly, the vertical integration post-merger between the parties for sale of APIs manufacture and sold, was also found to be unlikely to result into vertical foreclosure because Sun Pharma's revenue from the sale of APIs constituted only 5% of its total revenue and similarly that of Ranbaxy constituted only 6% of its total revenue. Accordingly, CCI focused on the examination of competition concerns in 51 molecules or relevant product markets of formulations where the combination would have more than 15% market share and found that in 7formulations, the combined entity will have an appreciable adverse effect on competition due to high market share (excess of 50%) post combination. This examination was based upon the market share of the merged entities, market share of competitors and number of significant players in the relevant market. CCI therefore, proposed the approval of the merger subject to the modifications proposed as follows- Ranbaxy to divest all products containing five formulations and Sun pharma to divest all products containing two formulations. However, after considering the amendments suggested by the merging parties to the proposed modifications, CCI directed Sun Pharma to divest, one formulation i.e. all products containing Tamsulosin + Tolterodine which are currently marketed and supplied under the Tamlet brand name, while,Ranbaxy was directed to divest, six formulations all products containing (i) Leuprorelin which are currently marketed and supplied under the Eligard brand name,(ii) Terlipresslin which are currently marketed and supplied under the Terlibax brand name, (iii)Rosuvastatin + Ezetimibe which are currently marketed and supplied under the Rosuvas EZ brand name, (iv) Olanzapine + Fluoxetine which are currently marketed and supplied under the Olanex F brand name, (v)Levosulpiride + Esomeprazole which are currently marketed and supplied under the Raciper L and, (vi) Olmesartan + Amlodipine + Hydroclorthiazide which are currently marketed and supplied under the Triolvance brand name. (The brands Tamlet, Eligard, Terlibax, Rosuvas EZ, Olanex F, Raciper L and Triolvance shall be collectively referred to as "Divestment Brands"). CCI has also asked the parties to give full information regarding divestment products to potential purchasers so as to enable them to undertake reasonable due diligence. However, divestment would not, inter alia, include any manufacturing facilities of the two companies, intellectual property rights which do not contribute to the current operations, any rights to the domain name of the Parties, Books and records required to be retained pursuant to any statute, rule, regulation or ordinance, as well as general books of account and books of original entry that comprise the parties permanent accounting or tax records. Sun and Ranbaxy are each required to appoint a senior management level employee(“Hold Separate Manager”) within seven days who would under the supervision of the monitoring agency ensure that the economic viability, marketability and competitiveness of the divestment products are maintained till the closing date. The Parties shall, for a period of five years from the Closing Date, not acquire direct or indirect influence over the whole or part of the Divestment Product(s).Detailed directions for the prospective buyer(s) for the Divestment Brands, including being independent and without any connection whatsoever with the merging parties have been issued. The buyers will also have to be approved by CCI after they fit in to the “Purchaser Requirements” prescribed in the order. If, the Parties do not reach agreement with the purchaser(s) regarding the Divestiture of all Divestment Product(s) within the First Divestiture Period (not more than 6 months), the Commission may direct the Parties to Divest the Alternative Divestment Product(s) within Second Divestiture Period (not more than 4 months) and may appoint an independent agency as Divestiture Agency to effect the Divestiture as provided the Order. Further, CCI would appoint a “Monitoring Agency” for the purpose of supervision of the modification. Functions to be carried out by the Monitoring Agency such as supervising the due diligence process, including the preparation of data room documentation etc. and submission of written report to CCI within 10 days every month, with recommendations for suitability of the purchaser proposed by the parties etc. in accordance with the Monitoring Agency Agreement. After divestiture, the parties have to go back to the CCI again to get approval for the terms and conditions of the sale and also which is the party that they are selling to, because the objective of the sale is to make sure that there is effective competition in those products in the market. The merger will take effect after the divestment has taken place for which maximum period of six months has been allowed. In case, this process takes more than six months, then there will be a subsequent second divestment period which will be four months. Further, CCI also directed that the proposed merger shall not take effect before the parties have carried out the divestiture of the products so specified.

(Source: CCI order dated December 5, 2014).

Comment: *The present deal, if granted final approval from all the regulatory bodies including CCI, will create India's largest and world's fifth biggest drug-maker and would have operations in 65 nations, 47 manufacturing facilities across 5 continents, along with a global portfolio of specialty and generic products.*

CCI approves Novartis-GlaxoSmithKline Plc deal

CCI vide its order dated December 12, 2014 has approved a deal between GlaxoSmithKline Plc (“GSK”) and Novartis. CCI, while approving observed that “the negligible presence" of GSK and Novartis and "the presence of significant competitors, the vaccines transaction is not likely to result in appreciable adverse effect on competition in the market in India". Further, the presence of significant competitors in consumer healthcare segment does not cause concerns in relation to the proposed Joint Venture. In India, GSK has been active through its various subsidiaries like Biddle Sawyer, GSK Asia, GSK Consumer Healthcare and GSK Pharmaceuticals. On the other hand, Novartis is present in India through four entities - Novartis India, Novartis Healthcare, Sandoz Private Ltd and Chiron-Behring Vaccine Private Ltd.

(Source: CCI order dated December 12, 2014).

INTERNATIONAL

EU : Commission approves acquisition of Lafarge by Holcim, with some riders

The European Commission has approved the proposed acquisition of Lafarge of France by Holcim of Switzerland under the EU Merger Regulations (ECMR) .However, the decision is conditional upon the divestment of Lafarge businesses in Germany, Romania and the UK and of Holcim operations in France, Hungary, Slovakia, Spain and the Czech Republic. Initially, the Commission had concerns that the transaction, as originally notified, would have had a detrimental effect on competition in a significant number of markets in the European Economic Area (EEA). The commitments offered by the two companies address these concerns. The proposed transaction concerns assets worth several billion euros and will create the world's largest cement producer with operations in 90 countries. As most construction materials, such as cement, aggregates, ready-mix concrete, are sold within a short distance from the site where they are manufactured, the Commission has focussed its assessment on the transaction's specific impact on customers located near Holcim and Lafarge's production facilities. The Commission's assessment revealed that the merged entity would have faced insufficient competitive pressure from remaining players in many markets. This would have brought a risk of price rises. In order to prevent a negative impact on competition, the companies committed to divesting most of the operations where their activities overlap. The assets to be divested include ready-mix concrete plants, aggregates quarries, integrated cement plants (which cover the entire cement production process from the extraction and transformation of limestone into clinker and its grinding into cement), grinding stations (which only carry out the final part of the process, i.e. the grinding of clinker into cement), as well as cement terminals (where large quantities of cement are transported from other facilities and stocked to be sold locally). Services include central functions (such as management, IT services, research and development) and alternative fuel resources relating to the use of processed waste as an alternative to conventional fuel to reduce operational costs. However, Holcim and Lafarge will not be allowed to close their deal until the Commission has approved the buyer(s) of the assets put up for sale.

(Source: European Commission: Press Release dated December15, 2014)

EU: Commission approves acquisition of aviation fuel supplier Statoil Fuel & Retail aviation by rival BP, with riders

The European Commission has approved the acquisition of aviation fuel supplier Statoil Fuel & Retail Aviation ("SFRA") of Norway by its rival BP, a UK based integrated gas and Oil Company under the merger regulations (ECMR). However, the decision is conditional upon the divestment of SFRA's activities at the airports of Stockholm, Malmö, Gothenburg and Copenhagen. Initially, the Commission had concerns that the few remaining players, would have been unable to sufficiently constrain the merged entity to avoid price increases. The commitments offered by BP address these concerns. The companies' activities overlap in the provision of fuel to airplanes at the airports of Stockholm, Gothenburg, Malmö (all in Sweden) and Copenhagen (Denmark). The proposed transaction, as originally notified, would have combined two large into-plane suppliers of aviation fuel at these airports and would have reduced the number of suppliers from 3 to 2 at Stockholm, Gothenburg and Malmö and from 4 to 3 in Copenhagen. The Commission's investigation showed that the barriers to entry the market for new players and even for the expansion of already active suppliers are high, due to difficulties in gaining access to the necessary infrastructure and differences in supply chain costs. Moreover, most airlines appear to have insufficient buyer power to counteract the consequences of an increased concentration in the supply of aviation fuel at these airports. The Commission, therefore, had concerns that the proposed transaction would have led to price increases for airlines. In order to address the Commission's concerns, BP committed to divest the target's activities at the four airports concerned. These divestments would remove the entire overlap with regard to the supply of aviation fuel. Moreover, the divestments would allow the entry of an additional aviation fuel supplier at these four airports. The Commission, therefore, concluded that the proposed transaction, as modified by the commitments, would not raise competition concerns. This decision is conditional upon full compliance with the commitments. The Commission also found that the transaction would not lead to competition concerns as regards the other airports included in this transaction, because there is sufficient competition from other players or because the companies' activities did not overlap in most of these locations.

(Source: European Commission: Press Release dated December15, 2014)

European Commission: Opens in-depth investigation into proposed acquisition by Orange of Jazztel

The European Commission has commenced an in-depth investigation to assess whether the proposed acquisition of Jazztelp.l.c. ("Jazztel"), a telecommunications company registered in the United Kingdom and active in Spain, by a rival Orange S.A. ("Orange"), of France, is in line with the merger regulations (ECMR). Orange is a provider of telecommunication services in more than 30 countries and operates mobile and fixed telecommunications networks in Spain through its wholly-owned Spanish subsidiary Orange Espagne, S.A.U. Jazztel provides telecommunication services at both retail and wholesale level in Spain through its subsidiary Jazz Telecom, S.A.U. It also operates a fixed telecommunications network and offers mobile telecommunications services on Orange's network. The Commission's initial investigation revealed that the transaction may reduce competition in the retail market for fixed Internet access where Orange and Jazztel currently compete. According to the Commission, both companies are important competitive forces with a stronger influence on the competitive dynamics in these markets than suggested by their market shares. The Commission ,therefore has concerns that the transaction would change the incentive of the merged entity to exert significant competitive pressure on the remaining two nationwide competitors, namely incumbent operator Telefónica and Vodafone, who acquired cable operator ONO earlier in 2014.

(Source: European Commission Press Release dated December 4,2014)

China: MOFCOM fines merging parties for failure to notify transaction law

The Ministry of Commerce ("MOFCOM") of the Peoples' Republic of China, by way of its order December 2, 2014, has imposed a fine of RMB 300,000 (approximately USD 48,000) for the failure to notify a transaction under the PRC Anti-Monopoly Law ("AML") on RDA Microelectronics' 2013 acquisition by Tsinghua Unigroup, a transaction valued at almost USD 1 billion. However, it is not clear when MOFCOM found out about the buyer's failure to file the notice. According to the decision, the transaction was closed in 2014.

China's AML includes a mandatory pre-closing merger control system for transactions meeting certain thresholds. These thresholds are very low: each of the buyer and the target must have sales in China in excess of RMB 400 million (USD 65 million), and the combined sales of the buyer and the target must exceed (i) RMB 10 billion (USD 1.5 billion) on a worldwide basis, or (ii) RMB 2 billion (USD 325 million) in China. Thus, any acquisition by a large multinational of a business that generates more than USD 65 million revenues in China must be notified. In addition, the merger control system captures joint ventures without regard to being "full-function" even if they have nothing to do with China. Failure to notify a transaction can be subject to a fine of up to RMB 500,000 (USD 80,000). In addition, MOFCOM has the power to unwind a transaction although it is unclear whether this power can only be exercised in case the non-notified transaction is anti-competitive.

(Source: http://www.jonesday.com/antitrust-alert--chinas-mofcom-fines-merging-parties-for-failure-to-notify-transaction-under-anti-monopoly-law-12-19-2014/)

IV. MISCELLANEOUS NEWS

India

MOU signed between Competition Commission of India and Competition Bureau Canada

A Memorandum of Understanding ("MOU") regarding Cooperation in the Application of Competition Laws was signed between Competition Commission of India (CCI) and Commissioner of Competition, Competition Bureau Canada (CB) on the sidelines of 2014 ICN Merger Workshop on December 01, 2014 in New Delhi. The MOU was signed by Mr. Ashok Chawla, Chairperson, CCI and Mr. John Pecman, Commissioner, CB. The MOU will facilitate cooperation between the CCI and the Bureau in all the competition related matters including cooperation and coordination in their enforcement activities when investigating the same or related competition matters. The cooperation as envisaged in the MOU is expected to benefit business entities in both the countries.

(Source: http://www.cci.gov.in/May2011/CBD/icn.pdf)

CCI imposed penalty on 322 entities so far

CCI has imposed penalty on 322 entities as follows:

Year	Number of entities on which the penalty has been imposed	Total amount (₹)
2011	38	6,87,28,40,613
2012	95	72,76,86,21,528
2013	20	18,34,28,35,225
2014 (as on 31.10.2014)	169	26,75,26,39,556
Total	322	1,24,73,69,36,922

CCI has already notified the CCI (Manner of Recovery of Monetary Penalty) Regulations, 2011 regulating the manner in which penalties imposed by it shall be recovered. However, The Competition Appellate Tribunal/ Courts have dismissed/ stayed the recovery of a sum of ₹ 1,21,78,01,01,298/- as penalty and a sum of ₹ 2,16,52,33,351/- is not yet due/not been paid as penalty so far. CCI is taking action as per law for recovery of penalties. This was stated by Shri Arun Jaitley, Minister of Corporate Affairs, Government of India in a written reply to a Parliamentary question in the Rajya Sabha on December 16, 2014.

(Source Press Information Bureau, Ministry of Corporate Affairs, Government of India dated December 16, 2014).

International

European Commission: Commission publishes fifth report on patent settlements in pharmaceutical sector

The Commission published its fifth report on the monitoring of patent settlements ("Report") which relates to the 146 patent settlements concluded between originator and generic companies in the pharmaceutical sector for the period of January 01, 2013 to December 31, 2013. According to the report, the total number of patent settlements during this period was higher than ever in any year since 2000, except for 183 settlements in year 2012. The Report further provides that the number of settlements that might attract competition law scrutiny has stabilized at a low level as 92 % of the settlements fell into categories that prima facie raised no need for competition law scrutiny. Finally, the Report concluded that the Commission may decide to continue the monitoring exercise in the future in order to examine further development of the foregoing trends.

(Source: European Commission Press Release dated December 5, 2014)

Pakistan: Government appoints Vadiyya Khalil as new Chairperson of Competition Commission of Pakistan

The Federal Government has appointed Ms. Vadiyya Khalil as Chairperson of the Competition Commission of Pakistan ("CCP") with immediate effect for a period of three years.Ms. Khalil has previously served as a Member CCP from 2010 to 2013 where she was overseeing the Mergers & Acquisitions and Advocacy functions of CCP. She has over 20 years of rich experience in corporate and commercial banking at international and national banks including Credit Agricole, ANZ Grindlys, MCB Bank Limited, Askari Commercial Bank and National Bank of Pakistan.

(Source: Competition Commission of Pakistan Press Release dated December 23, 2014)

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