Competition News Bulletin

VAISH ASSOCIATES ADVOCATES ESTD. 1971

Corporate, Tax and Business Advisory Law Firm

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I. CARTELS AND ANTI-COMPETITIVE AGREEMENTS

INDIA

CCI Imposes Penalty on LPG Gas manufacturers for Cartelization in Bidding Process in tenders floated by HPCL IN 2011

By way of order dated 09.08.2019, the Competition Commission of India ("CCI/Commission") has imposed penalty on 51 LPG manufacturers for collectively withdrawing their bids from a tender floated by Hindustan Petroleum Corporation Ltd ("HPCL") for procurement of 14.2 Kg LPG cylinders in 2011.

The case was initiated suo moto on the basis of an anonymous letter dated 25.04.2013 by which the CCI was informed that there was an alleged cartel operating in the tenders floated by HPCL.

E-tender No. 11000083-HD-12001 ("Tender No.1") was floated by HPCL on 28.10.2011 for supply of 45, 00,000 14.2 Kg LPG cylinders, under a two bid system (technical and price bids), to its depots in 18 states. One of the conditions of the tender was that a particular bidder could only bid for 9 States out of the 18. The allegation in this tender was that the orders placed on the vendors were at prices higher than the procurement price of other oil companies with the same vendors during the same period. It was also alleged that cylinders continued to be procured at higher rates, and thus, HPCL may have incurred losses running into crores.

E- Tender No. 12000147-HD-12002 ("Tender No. 2") was floated by HPCL on 24.01.2013 for supply of 40, 00,000 14.2 Kg cylinders, under a two bid system, to its bottling system located in 18 States. It was alleged that while the evaluation of the bidding process was undertaken, 51 bidders withdrew their bids by submitting letters of withdrawal citing reasons such as power cuts, labor problems etc. Some bidders did not provide any reason for their withdrawal.

The Commission observed that identical prices were quoted by bidders despite the fact that they had different costs. Moreover, the Director General ("DG") had found that the bidders were in contact with each other which was also admitted by the bidders themselves in their respective depositions. However, the Commission was of the view that parallel pricing can only lead to a strong suspicion of cartel and cannot lead to positive conclusion regarding bid rigging. CCI noted that the investigation had nowhere revealed that the quotation of identical prices was with an aim to share the market among themselves. Moreover, CCI held that the information exchanges between competitors could constitute a concerted practice if it involves sharing of strategic data between them such as details about price, demand, capacity utilization, and internal documents evidencing knowledge or understanding of competitor's pricing strategy, awareness of future price increase by a rival etc. Although, the representatives of the Opposite

parties knew each other and admitted to have been interacting with each other on a regular basis, however, the investigation did not bring out any evidence of exchange of any strategic information in relation of discussion of quotation bids in Tender No.1.

CCI also sought the views of HPCL and found that the rate quoted by the bidders is only one of the factor that is taken into consideration in addition to existing procurement cost and industry rates, and HPCL is neither constrained nor dependent on the rates quoted by the bidders. Moreover, the Commission also noted that HPCL is aware of the fact that there can be identical rates offered by bidders and for that reason it has introduced the concept of integrity pacts in its tenders, however, it was not invoked by HPCL despite there being existence of price parallelism in the bids.

Accordingly, considering the submissions of HPCL and in the light of judgement passed by the Hon'ble Supreme Court in the Rajasthan Cylinders Case[1], CCI decided not to examine the conduct of bidders in Tender No.1

The Commission noted that the bidders had quoted identical rates in Tender No. 2 after discussing with each other and admitted to have always talked to each other before submitting their bids. However, in view of the decision taken in Tender No.1 above and absence of any corroborative evidence of collusive bidding of coordinated action apart from quoting identical bids, the Commission decided not to proceed with the Opposite Parties who quoted identical prices.

CCI acknowledged that out of the 51 LPG manufacturers who withdrew their bids, 21 did not provide any reasons in their withdrawal letters, 9 stated unavoidable circumstances, 4 stated calculation error and 7 gave explanation of manpower shortage, labor problem, power cuts etc. as their reason for withdrawal. Opposite parties were unable to justify their reason during the investigation. The Commission also noted that apart from related Opposite parties, several unrelated Opposite parties uploaded their bids from common IP addresses which could not be possible without the existence of a prior understanding.

The Commission also examined the e-mails exchanged between the Opposite Parties and concluded that they were regularly communicating with each other and coordinating their conduct by sharing sensitive and confidential information in relation to tenders. The Commission also acknowledged the existence of National as well as regional associations which could have played a role as a platform to facilitate collusion.

The Commission, apart from noting the above factors, observed that a number of LPG manufacturers had used common language and format in their withdrawal letters to HPCL and had filed these letters on the same day i.e. 04.04.2013 which, in the opinion of the Commission, could not be a sheer coincidence. The reasons furnished by many of the LPG manufacturers were also identical or many a times common

1 Rajasthan Cylinders and Containers Ltd v Union of India (Civil Appeal No. 3546 of 2014)

despite the fact that such bidders were situated through the length and breadth of the country and submitted their bids for different States.

Accordingly, the CCI imposed penalty at the rate of 1% of the average relevant turnover for the financial year 2013-14, 2014-15 and 2015-16 on each of the 51 LPG manufacturers who withdrew their bids. Also, a penalty calculated at the rate of 1% of the average income of the financial year 2013-14, 2014-15 and 2015-16 was imposed on the Directors/Partners/Employees of each of the bidders.

(Source: CCI order dated 09.08.2019; for full text see CCI website)

COMMENT: *Though this order exhibits acceptance of the ratio decidendi of the Supreme Court judgment in the first and main LPG Cylinder cartel case by CCI (in which we represented 44 out of 51 bidders before CCI) by not holding parallel pricing by distantly situated suppliers as amounting to cartel due to unique market conditions dominated by the monopsonist buyer (HPCL) yet the time taken by CCI to arrive at a finding of collective withdrawal from the bidding process (which may also tantamount to cartelization) is noteworthy and shows a severe resource constraint at CCI .*

CCI imposes penalty for collusive bidding in tender floated by Pune Municipal Corporation

By way of order dated 02.08.2019, CCI has fined SAAR IT Resources Pvt. Ltd ("SAAR"), CADD Systems and Services Pvt. Ltd("CADD") and Pentacle Consultants (I) Pvt. Ltd ("Pentacle") for collusive bidding in a tender floated by Pune Municipal Corporation ("PMC").

PMC had floated a tender (Tender No. 338 of 2015 dated 11.01.2016) for 'Selection of agency for carrying out geo-enabled tree census using Geographical Information System (GIS) and Global Positioning System (GPS)' pursuant to the directions issued by the High Court of Bombay vide judgment dated 20.09.2013. SAAR won the tender with a price quote of INR 22.70/- per tree.

CCI observed that there was a tacit understanding between SAAR and CADD as well as SAAR and Pentacle, pursuant to which CADD and Pentacle merely acted as proxy bidders/ cover bidders for SAAR. Lack of proper scrutiny by PMC ensured that CADD and Pentacle qualify the technical round and be in reckoning so as to benefit SAAR, to get the tender. Also, SAAR by arranging Demand Drafts for CADD and Pentacle, from its own resources, and by facilitating submission of online bids of Pentacle from its own office ensured that sufficient number of bidders were available.

As regards PMC, the Commission noted that the facts of the present case were similar to an earlier case (Case No. 50/2015) in which CCI had observed that PMC had failed to detect cartelization in its own tenders and had not exercised due diligence while scrutinizing the bid documents. With respect to the present case also, the DG had found enough evidence that PMC had failed to detect cartelization in its own

tender. Shortlisting proxy bidders which did not satisfy the technical criteria and other systematic failures on the part of PMC indicated that the conduct of PMC might have facilitated the bid rigging. However, the CCI held that PMC's conduct needs not be examined under the provisions of Section 3 of the Act, as it was a procurer.

(Source: CCI order dated 02.08.2019; for full text visit CCI website)

CCI orders investigation against Maruti Suzuki for allegedly controlling discounts of its dealers in Western India

By way of order dated 04.07.2019, CCI has directed the DG to undertake a 'thorough and detailed' investigation to ascertain the factual position and modus operandi resorted by Maruti Suzuki India Ltd ("MSIL") after forming a prima facie opinion that MSIL is undertaking discount control mechanisms with its dealers and thereby indulging in Resale Price Maintenance (RPM).

The case was initiated suo moto by the CCI based on an anonymous e-mail dated 17.11.2017 ('the e-mail') sent by an anonymous Maruti Dealer alleging RPM resorted by MSIL in its West-2 Region i.e. Maharashtra State other than Mumbai & Goa. The e-mail revealed that the dealers of MSIL in the West-2 Region are restricted from giving extra discount to their customer and if a dealer is found giving discounts higher than the permitted level, penalties are levied based on the number of incidents found in a particular financial year. The informant also attached copies of e-mails which highlighted the penalties levied upon the defaulting dealers and such emails did not mention the purpose of the penalties being imposed.

It was also alleged that the MSIL management sends an e-mail with a "Mystery Shopping Audit Report" to the dealers and ask for clarification regarding the discounts offered. This Mystery Shopping Audit Report is generated pursuant to a mystery shopping audit by MSIL's independent agency wherein a fake customer visits the dealer in order to check whether extra discount is being offered or not along with an audio proof of the same. The penalized dealers are then required to deposit a cheque of the penalty amount in the name of Ms. Swati Kale (wife of Vice-President of Wonder Cars Pvt Ltd- one of MSIL dealers in Pune).

CCI observed that MSIL is a market leader in the passenger car segment in India with more than 50% market share in 2017-18 followed by Hyundai Motor India Ltd with 19.65% market share during the same period.Pertinently, the Commission observed that although Clause 28.1 of the Dealership Agreement allows dealers to provide additional discounts and MSIL has listed instances where discounts above Consumer Offer has also been provided, however, it was of the opinion that investigation is required to ascertain as to whether such agreement that allows dealers to give additional discounts is actually followed without any restraint.

Accordingly, the Commission was of the view that a thorough and detailed investigation is required to be ordered to ascertain the factual position and modus operandi resorted to by MSIL.

(Source: CCI order dated 04.07.2019; for full text visit CCI website)

CCI penalizes Jalgaon District Medicine Dealers Association for imposing PIS charges on pharma companies

CCI, by way of order dated 20.06.2019, has imposed a penalty of INR 80,185/- on Jalgaon District Medicine Dealers Association ("JDMDA/OP") in the State of Maharashtra, India for collecting Product Information Service ("PIS") charges from the manufacturers of pharmaceutical products and thereby restricting the supply of medicines in the market. Penalties were also imposed on the President and Secretary of JDMDA.

CCI, during its analysis,reiterated the stand that whether PIS charges are anticompetitive or not depends upon whether these charges are voluntary or mandatorily payable prior to the launch of the drug of pharmaceutical companies.

Based on replies and statements filed, most pharmaceutical companies believed that publication of their products in the association's bulletin newsletter was an effective way to spread awareness about the new products and was beneficial to the entrants. However a few deposed otherwise.

Statement of Mr. Chachad, an ex-employee of Cerovene Healthcare Private Limited was found of importance to the Commission which read "If PIS charges are not paid then the product will not be sold in that particular district." Upon cross examination, this statement was corroborated by an email dated 5.2.2013 exchanged between Mr. Chachad and the JDMDA wherein the company had provided an undertaking "not take any products on which PIS charges are not paid". Furthermore, upon being questioned as to why products of Cerovene Healthcare Private Limited were sold in most parts of Maharashtra but not sold by retailers/wholesalers in Jalgaon District, the ex-employee stated that it did not receive permission from the JDMDA to launch their product. Mr Chachad's reasoning was further backed by the statement of Ms. Nita Shah, Director of Cerovene Healthcare Private Limited.

The Commission also shed light upon a letter exchanged between the JDMDA and Proprietor of M/s Unifab Pharmaceuticals, Mr. Salem who sought permission to launch its products. The nature of the letter was obvious due to the usage of terms like 'Request for the Permission to Launch……" in the subject line of the letter.

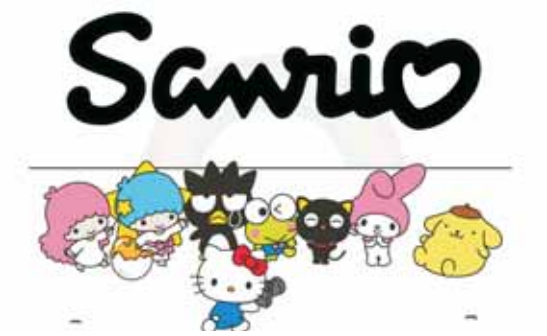
Furthermore, Secretary of the JDMDA admitted having missed out about 70-80 drugs from publication. The DG also found that out of the 4000 drugs for which payment was received by the JDMDA, PIS

information was published only in respect of 216 drugs. This established that the purpose of PIS was not to spread information about new drugs in Jalgaon District. Had it been so, the OP, ought to have published the information supplied by the pharmaceutical company for every drug/dosage/strength in its bulletin.

(Source: CCI order dated 20.06.2019; for full text see CCI website)

INTERNATIONAL

EC imposes fine on Sanrio for restricting cross-border sale of merchandising products featuring 'Hello Kitty' characters



The European Commission ("EC") has found Sanrio Company Ltd.'s ("Sanrio") non-exclusive licensing agreements, whereby the traders were banned from selling licensed merchandise to other countries within the European Economic Zone (EEZ), to be in breach of EU competition rules and imposed a penalty of 6.2 million Euros.

Sanrio designs, licenses, produces and sells products featuring 'Hello Kitty' among other popular characters. All licensed merchandising products carry one or more logos or images protected by intellectual property rights (IPRs) and through a licensing agreement one party allows another party to use one or more of its IPRs in a certain product. Normally, these licensing agreements are non-exclusive in order to increase the number of merchandising products in the market and territorial coverage.

EC found that Sanrio had imposed a number of direct and indirect measures in its licensing agreements which restricted out-of-territory sales by the licensees. The direct measures included (i) clauses explicitly prohibiting out-of-territory sales; (ii) obligations to refer orders for out-of-territory sales to Sanrio; (iii) limitations to the languages used on the merchandising products. On the other hand, the indirect measures included carrying out audits and the non- renewal of contracts if licensees did not respect the out-of-territory restrictions.

EC observed that Sanrio's conduct, which continued from 1 January 2008 to 21 December 2018 (11 years), had partitioned the Single Market and prevented licensees in Europe from selling products cross-border which was in detriment to the European Consumers.

A 40% fine reduction was granted to Sanrio for extending cooperation with the proceedings and also providing evidence with significant added value.(Source: EU press release dated 9.07.2019)

EC opens investigation into possible anti-competitive conduct of Amazon

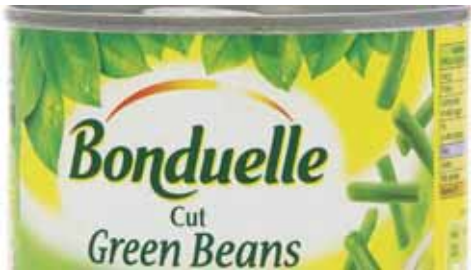
Amazon as a platform plays two roles: (i) It sells products on its website as a retailer; and (ii) It provides a marketplace where independent sellers sell products directly to the consumers. When it provides a marketplace for independent sellers, Amazon continuously comes into possession of data about the activity on its platform.

As per the EC's preliminary finding, Amazon appears to use competitively sensitive information about marketplace sellers, their products and transactions on the marketplace.

Accordingly, in the in-depth investigation the EC will look into: (i) the standard agreements between Amazon and marketplace sellers which allows Amazon's retail business to analyze and use third party seller data and how the use of such data affects competition; (ii) the role of data in the selection of the winners of the "Buy Box" and the impact of Amazon's potential use of competitively sensitive information on that selection.

(Source: EU press release dated 17.07.2019)

EC imposes penalty on Coroos and Groupe CECAB for participating in canned vegetables cartel



The EC found that Bonduelle, Coroos and Groupe CECAB participated in a cartel for the supply of certain types of canned vegetables to retailers and/or food service companies in the European Economic Area (EEA), and resultantly, imposed a fine of 13 647 000 Euros on Coroos and 18 000 000 Euros on Groupe CECAB. No penalty was imposed on Boundelle as it revealed the existence of the cartel to EC. The cartel operated for a period of more than 13 years. The three undertakings set prices, agreed on market shares and volume quotas, allocated customers and market, coordinated their replies to tenders and exchanged commercially sensitive information.

The investigation revealed the existence of a single infringement comprising three separate agreements: (i) agreement covering private label sales of canned vegetables such as green beans, peas, peas and carrot mix, vegetable macedoine to retailers in the EEA; (ii) agreement covering private label sales of canned sweetcorn to retailers in the EEA; (iii) agreement covering both own brands and private label sales of canned vegetables to retailers and to the food service industry specifically in France. Bounduelle had participated in all three agreements while Coroos had participated in only the first.

Bounduelle avoided a fine of 250 Million Euros by receiving full immunity for revealing the existence of the cartel.

(Source: EU press release dated 27.09.2019)

II. ABUSE OF DOMINANCE

INDIA

CCI fines Jai Prakash Associates for abusing its dominant position in the market for sale of independent villas in Integrated Townships in the territory of Noida and Greater Noida

CCI, imposed a penalty of INR 13.82 Crores on Jai Prakash Associates ("JPA") for abusing its dominant position by including various one sided and unfair clauses in its Provision Allotment Letter ("PAL").

CCI observed that JPA had the largest market share in terms of number of units launched/ sold in the relevant market of independent residential units, such as, villas, estate homes, town homes and row-house in integrated township in Noida and Greater Noida during the relevant period of FY 2009-10 to 2011-12. JPA had launched 180 independent residential units during the FY 2010-11 whereas none of its competitors had launched any independent residential units during the relevant period in their integrated townships in Noida and Greater Noida. CCI also observed that during the relevant period the total sale value in respect of independent residential units sold by the JPA in its integrated township project in Noida/ Greater Noida was INR 828.95 crore. On the other hand, none of its competitors in the relevant market namely Unitech and Omaxe had sold any independent residential unit during the aforesaid period in their integrated townships in Noida/ Greater Noida.

The Commission observed that Clause 2.4 had the effect of taking away the rights of allottees at all the stages i.e., before or after taking possession, to prevent JPA from amending/ altering the plans, putting-up additional constructions and constructing other buildings or other structures in the area adjoining the said premises.

The interest rate imposed on the allottee under clause 5.6 of the PAL was one-sided and unfair since the interest rate chargeable from the allottee in case of delay in making payments was much more than interest payable by JPA for delay on account of handing over of possession to the allottee.

Clause 6.9 conferred on JPA the right and sole discretion to create an equitable mortgage or charge or hypothecation on the leased land and construction thereon in process or on the completed construction in favor of one or more lending institutions even after a substantial amount has been paid by the allottees.

Non-availability or scarcity of steel and/or cement and/or other building materials and/or water supply and/or electric power and/or slowdown was given the color of force-majeure by Clause 7.2. The Commission noted that clause 7.2 ensured that JPA does not pay any compensation/ damage to the allottees in case of the above-mentioned events even when they are actually not within the meaning of the term 'force majeure'.

Clause 8.1 provided that upon expiry of a period of 90 days from the date of dispatch of the notice of possession, JPA, in addition to reserving the right to levy holding charges, also has the right to cancel the provisional allotment and refund the payments received from the applicant. The Commission observed that JPA had retained unilateral power to cancel the provisional allotment and the allottee has no option but to accept the unilateral decision of the JPA.

CCI was of the view that JPA, no doubt, had taken a step in this regard by incorporating clause10.9 in the contract to ensure that disputes, if any, are settled expeditiously and amicably. However, one of the facets of justice is the presence of an impartial arbitrator and the same was not provided for by JPA. The conduct of JPA in appointing the arbitrator itself, that too the one related to it, and mandating that the allottees should waive the right to object to the above said appointment, was considered to be totally unfair and one sided.

Accordingly, CCI concluded that JPA had violated Section 4(2) (a) (i) of the Act for imposing unfair/discriminatory conditions in the PAL and imposed a penalty calculated @ 5% of the average turnover of the preceding three years amounting to INR 3.82 crores.

(Source: CCI order dated 09.08.2019; for full text visit CCI website)

CCI directs investigation into India specific warranty policy of Intel finding it potentially abusive of dominance

By way of order dated 09.08.2019, CCI has directed the Director General (DG) to undertake investigation with respect to Intel's India specific warranty policy in regard to its Boxed Micro-Processors, after finding a prima facie case for a potential abuse of dominant position against Intel.

The Commission compared the worldwide and India specific warranty policy of Intel on its website and noted that only Intel Boxed Micro-Processors sold by Intel Authorized Distributors in India and purchased in India are eligible for warranty service in India. The Commission noted that under the new India specific warranty policy, Intel does not offer warranty services to consumers in India, on products purchased by them from the parallel importers, even when such parallel imports were made from authorized distributors of Intel abroad and for claiming service on such warranty, the customers have to contact Intel at the place of purchase only.

CCI noted that the distinction made by Intel, due to its India specific policy, is unfair and discriminatory when seen in the light of the fact that such differential treatment is not meted out in other jurisdictions by Intel.

Accordingly, CCI was of the prima facie opinion that the new differentiated India specific warranty policy of Intel regarding its Boxed Micro-Processors is in contravention of Section 4 (2) (a) (i) of the Act and directed the DG to conduct an investigation into the same.

(Source: CCI order dated 09.08.2019; for full text visit CCI website)

CCI closes case of abuse of dominance against ONGC- accepts objective justification as a valid defense in a one sided contract

By way of order dated 02.08.2019, CCI dismissed allegations of abuse of dominant position by Oil and Natural Gas Corporation Limited ("ONGC") in the market for charter hire of Offshore Support Vehicles (OSVs) in the Indian Exclusive Economic Zone (EEZ), after a thorough investigation by the Director General (DG) .

For procurement of the services of the OSVs, ONGC floats International Competitive Bidding (IBC) tenders which contained a model contract comprising of General Conditions of Contract ("GCC") and Special Conditions of Contract ("SCC") collectively referred to as the Charter Hire Agreement ("CHA").CCI analyzed the existence of termination of convenience Clause in the CHA and the use of it by ONGC against companies providing OSV services.

Upon examining the legal position in UK, USA and India, the Commission observed that a provision of termination for convenience itself is not uncommon and should not generally be construed as unfair or abusive unless it is specifically used in an unfair manner without meeting the legal tests of 'good faith' and 'change in circumstances'. The Commission observed that in the instant case, the termination of convenience clause entitles only ONGC to terminate the contract without assigning any reason while no such right is provided to the OSVs. The Commission acknowledged that any such one sided clause, being contrary to the legal principle of mutuality of contract, appears unfair, however, the feasibility and desirability of a reciprocal right will depend on where the balance of convenience lies on account of associated risks of the Parties to the agreement in terms of their respective business.

The Commission noted that ONGC had highlighted various risks which it is exposed to being in the Exploration and Production ("E&P") operations. ONGC not only bears the geological risk, i.e. the difficulty of extraction and the possibility that accessible reserves in any deposit will be smaller than estimated, but also the uncertainty of the worldwide price of crude oil which continuously determines the commencement and continuity of projects. The kind of projects being carried out by E&P companies cannot be shut down immediately and then restarted easily. On top of this, being governed by the government procurement rules, ONGC is required to follow an elaborate process of tendering, which means a long lead-time for hiring of vessels. At any given time, ONGC has a requirement of certain

number of OSVs, which are indispensable to its E&P activities and if a contract is terminated at the behest of the OSV providers for their convenience, ONGC would have to re-issue a tender and pending its completion, the project would come to a standstill resulting in huge losses to ONGC, which will have implications for overall E&P activities in India as well.

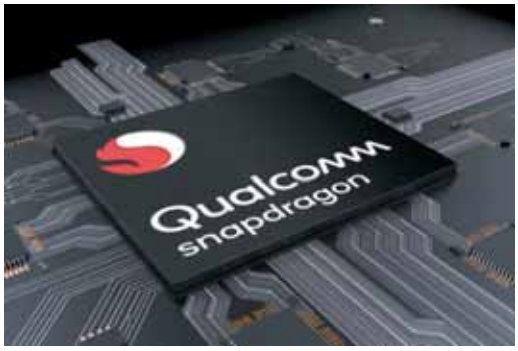
CCI also acknowledged the fact that ONGC did not issue termination notices at the first instance of reduction in oil prices i.e. 2014, but, it waited for a reasonable time and until the expiry of the period mentioned in Clause 14.2. Also, the said clause was invoked for the first time that too in an unprecedented and exceptional situation, though the said clause had existed for 30 years.

CCI held that ONGC's conduct was not motivated by any malice or with an intention to injure any particular OSV or OSVs in a discriminatory manner and being an enterprise governed by government regulations, the potential consequence of continuing with contract at substantially higher rates cannot be overlooked. Accordingly, the CCI held that there was an objective necessity to bring down the costs in new market circumstances and the termination was driven solely by that necessity and obligation.

(Source: CCI order dated 02.08.2019; for full text see CCI website)

INTERNATIONAL

EC fines Qualcomm for engaging in predatory pricing in the market for UMTS baseband chipsets



EC has imposed a fine of 242 042 000 Euros calculated at the rate of 1.27% of Qualcomm's turnover in 2018 for abusing its dominant position in the Universal Mobile Telecommunications System ("UMTS") market by engaging in predatory pricing from mid-2009 to mid-2011.

Baseband chipsets like UMTS enable smartphones and tablets to connect to cellular networks and are used both for voice and data transmission. EC found that Qualcomm held a dominant position in the global market for UMTS baseband chipset in 2009-2011 having a market share of approximately 60% which was almost three times the market share of its biggest competitor. EC found that Qualcomm had sold three of its UMTS chipsets below cost to Huawei and ZTE with the intention of eliminating Icera, which was becoming a viable supplier of UMTS chipsets providing high data rate performance and thus was posing as a growing threat to Qualcomm's business. EC held that the price concessions made by Qualcomm allowed it to maximize the negative impact on Icera's business while minimizing the effect on Qualcomm's own overall revenues from the sale of UMTS chipsets.

(Source: EU press release dated 18.07.2019)

III. COMBINATIONS

INDIA

CCI approves acquisition of 100% paid up share capital of UGML and UVSL by Carval Funds and Nithia

By way of order dated 3.06.2019, CCI has approved the acquisition of 100% of the total issued and paid up share capital of Uttam Galva Metallics Limited ("UGML") and Uttam Value Steel Limited ("UVSL") by Carval Funds and Nithia Capital Resources Advisors LLP ("Nithia").

At the time of the order, UGML and UVSL were undergoing two separate insolvency resolution proceedings under the Insolvency and Bankruptcy Code, 2016 and the notice before the CCI was filed pursuant to resolution plans submitted by the acquirers.

The acquirers informed the CCI that, due to the indispensable and highly integrated steel manufacturing operations of UGML and UVSL, they propose to acquire them together (and not on standalone basis) and the acquisition of UGML is a precedent to the acquisition of UVSL.

The Commission observed that the acquisition relates to the steel sector in India in which Carval Funds do not have any investments apart from their holding 0.7% in Tata Steel BSL Ltd as a result of conversion of their debt investment. As regards Nithia, the Commission noted that neither has it made any investments nor are engaged in any business in India.

Accordingly, CCI held that the transaction is not likely to result in a change in competition dynamics in any market in India and, therefore, approved the Combination.

(Source: CCI order dated 03.06.2019; for full text see CCI website)

CCI approves acquisition of 75% shareholding in Essel Propack Limited by Epsilon Bidco

By way of order dated 3.06.2019, CCI has approved the acquisition of up to 75% shareholding of the issued and outstanding equity shares of EsselPropack Limited ("EPL") by Epsilon Bidco Pte Ltd ("Epsilon"). Epsilon is an affiliate of funds advised or managed by the affiliates of The Blackstone Group L.P ("Blackstone")

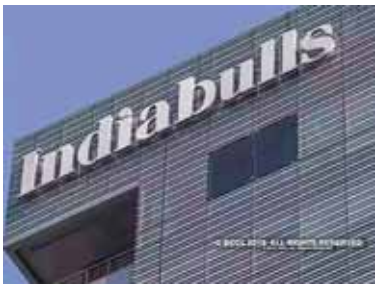
As per the Share Purchase Agreement entered into and between Epsilon and Ashok Goel Trust acting through its trustees- Mr. Ashok Goel and Mrs. Kavita Goel, Epsilon has acquired – (i) up to 51% shareholding in EPL on a fully diluted basis from Ashok Goel and Kavita Goel; (ii) up to 26% of EPL's share capital from the public shareholding pursuant to a Public

Announcement, such that it does not exceed 75% of the issued and outstanding equity shares of EPL.

The Commission observed that there are no horizontal or vertical overlaps between Epsilon and EPL, however, there are certain affiliates of Blackstone which are engaged in packaging sector but these affiliates are either located outside India or have minimized presence in India. Accordingly, CCI approved the transaction pursuant to which Epsilon has acquired control over EPL and consequently has become a promoter of the same.

(Source: CCI order dated 03.02.209; for full text see CCI website)

CCI approves merger of Indiabulls Housing Finance Limited and Indiabulls Commercial Credit Limited into Lakshmi Vilas Bank Limited



CCI, by way of order dated 20.06.2019, has approved the merger of Indiabulls Housing Finance Limited ("IHFL") and Indiabulls Commercial Credit Limited ("ICCL") into Lakshmi Vilas Bank Limited ("LVB") and the resultant company is proposed to operate under the business name of Indiabulls Lakshmi Vilas Bank Limited (subject to approval of the name by relevant authorities).

CCI observed that one of the promoters of IHFL i.e. Mr. Sameer Gehlaut has also promoted (directly or indirectly) companies offering financial services viz. Indiabulls Ventures Limited ("IVL") and Indiabulls Rural Finance Private Limited ("IRFPL").

CCI noted that the IHFL Group (IHFL, ICCL, IVL and IRFPL) and LVB are engaged in the business of provision of loans in India, distribution of mutual funds and distribution of insurance policies/products. The Commission observed that, within the business of lending, the activities of IHFL Group and LVB particularly overlap in provision of home loans, loan against property and MSME loans. With respect to the distribution of insurance products, the Commission observed that there is an overlap in distribution of life, health and general insurance product/schemes. However, the incremental market share of the resultant company, as observed by the CCI, turned out to be insignificant.

Moreover, the CCI also took note of the vertical overlap between the provision of mutual funds by IHFL Group and the business of distribution of mutual funds by LVB, however, owing to the insignificant size of such business of LVB the Commission held that it is not likely to raise any competition concern.

Pursuant to the approval, the extant promoters of IHFL will be designated as the promoters of ILVB and the present promoters of LVB will be reclassified as public shareholders. In addition, IHFL Promoter Group will now hold 19.5% of the equity share capital of LVB, which they propose to reduce to 15% of the paid up voting share capital of ILVB.

(Source: CCI order dated 20.06.2019; for full text see CCI website)

COMMENT : " It may be noted that the Reserve Bank of India (RBI) has rejected the merger on 09.10.2019.The reason(s) for rejection was not made public officially."

CCI approves acquisition of additional shares of Mumbai International Airport Ltd by GVK Airport Holdings Ltd

By way of order dated 26.07.2019, CCI has approved acquisition of additional shares of Mumbai International Airport Ltd ("MIAL") by GVK Airport Holdings Ltd ("GVK"), as a result of which the latter has increased its stake from 50.5% to 60.5% in the former.

MIAL was incorporated in 2006 by Airport Authority of India and has been operating as a subsidiary of GVK.

The Commission noted that GVK is present in India in the airport services sector solely through MIAL and its subsidiaries/joint ventures and the proposed transaction only involves increase in shareholding of GVK. Accordingly, the Commission approved the acquisition.

(Source: CCI order dated 26.07.2019; for full text see CCI website)

CCI approves acquisition of shares of TVS Automobile Solutions Pvt. Ltd by Mitsubishi

By way of order dated 06.09.2019, the Commission has approved the acquisition of shares of TVS Automobile Solutions Pvt. Ltd ("TVS") by Mitsubishi Corporation ("Mitsubishi") by way of subscription as well as purchase from some of the existing shareholders. Post the transaction, shareholding of Mitsubishi in TVS will increase from 3.26% to approximately 25%.

CCI noted that Mitsubishi and TVS are not engaged in the production/provision of similar or identical or substitutable products or services, either directly or indirectly in India.

The Commission, however, took note that Mitsubishi has equity stake in Isuzu Motors India ("IMI") which provides emergency Roadside Assistance Service ("RAS") to TVS for the Isuzu brand vehicles. The Commission observed that the number of IMI vehicles enrolled and attended by TVS for RSA service is insignificant vis-à-vis the total number of vehicles enrolled with and attended by TVS. Also, the market presence of IMI in supply of passenger vehicles in India was also found insignificant. Accordingly, CCI approved the transaction.

(Source: CCI order dated 06.09.2019; for full text see CCI website)

INTERNATIONAL

EC approved acquisition of Pfizer's Consumer Health Business by GlaxoSmithKline subject to conditions

GlaxoSmithKline ("GSK") and Pfizer's Consumer Health Business are both manufacturers and suppliers of variety of consumer healthcare pharmaceuticals which are typically available to patients without a prescription form a doctor which are commonly referred to as Over The Counter (OTC) pharmaceutical products. Both the companies are active in the European Economic Zone (EEZ) in a number of OTC product categories such as topical pain management, systemic pain management, cold and flu treatments, nutrition and digestive health etc.

EC observed that in case of topical management products, GSK is a leading OTC supplier in the EEA with its range of Volta- branded products (Voltaren, Voltadol or Voltarol) which are usually sold as medicated gel, creams or spray but also as medicated and non-medicated patches. As regards Pfizer, the EC observed that it is mostly active in the EEA with its range of ThermaCare- branded products which consists mainly of non-medicated patches. EC found that in the market for topical pain management, the products are broadly substitutable irrespective of their different form or composition.

EC was concerned that the acquisition would reduce competition for topical management products which possibly would have resulted in price increases in a number of EEA countries including Austria, Germany, Ireland, Italy and the Netherlands. To address these concerns, the companies offered to divest Pfizer's topical pain management business under the ThermaCarebrand globally to one suitable purchaser to be approved by EC.

EC concluded that the proposed transaction, as modified by the commitments, would no longer raise competition concerns in the EEA and approved the acquisition.

(Source: EU press release dated 10.07.2019)

EC approves Novelis' acquisition of Aleris, subject to conditions

Aleris

Novelis

Both Novelis and Aleris are global manufacturers of aluminum flat rolled products and have a significant presence in the EEA. Novelis is the largest producer of the aluminium automotive body sheets worldwide, with Aleris, an established supplier of the same product.

The EC observed that aluminum flat rolled products such as aluminium automotive body sheets are in a separate market than other aluminium

products, which means, that the merged entity would have very high market shares and controlled a very significant proportion of the manufacturing capacity for aluminium automotive body sheets in the EEA. Moreover, the limited number of smaller competitors active in the market would not have been able to defeat a price increase due to their limited spare capacity.

In order to address the concerns of the EC, the parties offered to divest Aleris' entire aluminium automotive body sheets in Europe including its production plant in Duffel, Belgium. The EC noted that the proposed divestiture would remove the entire overlap in aluminium automotive body sheets in Europe and the divested assets constitute a viable integrated business that would enable a suitable buyer to effectively compete with the merged entity. This view of the EC was also confirmed by the feedback received from market participants.

(Source: EU press release dated 01.10.2019)

EC approves Connect Airway's acquisition of Flybe, subject to conditions

EC has approved the acquisition of UK regional air carrier- Flybe, by Connect Airways- a consortium by Virgin Atlantic, Stobart Aviation and Cyrus. The EC investigated the impact of the proposed transaction on the market for air transport of passengers on routes from British airports to other European airports as well as some intra-UK routes.

The EC found that a quasi-monopoly situation can arise from Air France- KLM acquiring indirect control over Flybe via its joint control over Virgin Atlantic. The EC had approved the joint acquisition of Virgin Atlantic by Air France- KLM, Delta and Virgin group in February 2019. The EC found possible quasi monopoly situations on two direct European routes namely Birmingham- Amsterdam and Birmingham- Paris. EC also noted that the entry of competitors into these routes would be difficult as both Amsterdam Schiphol and Paris Charles de Gualle airports are very congested airports.

To address these concerns, Connect Airways committed to the release of five daily slot pairs at Amsterdam Schiphol airport and three daily slot pairs at Paris Charles de Gaulle airport. Resultantly, these slots will be released to competing airlines that wish to fly the Birmingham- Amsterdam and Birmingham- Paris routes.

(Source: EU press release dated 05.07.2019)

EC imposes penalty on Canon for partially implementing its acquisition of Toshiba Medical Systems Corporation before notification and approval

EC has imposed penalty of 28 million Euros on the Japan based imaging and optical products manufacturer- Canon for implementing its acquisition of Toshiba Medical Systems Corporation ("TMSC") before notification to and approval by the Commission.

On 12.08.2016, Canon notified the EC of its plan to acquire TMSC from Toshiba and the transaction was cleared unconditionally by the EU on 19.09.2016. For the said acquisition, Canon used a two-step structure involving an interim buyer- (i) interim buyer acquired 95% in the share capital of TMSC for 800 Euros, whereas Canon paid 5.28 billion Euros for the remaining 5% of the shares and share options over the interim buyer's stake; and (ii) following approval of merger by EC, Canon exercised its share options, acquiring 100% of the shares of TMSC.

EC found that the first step of the above transaction was carried out prior to notification to or approval.

The EC observed that the first and second steps formed together a single notifiable merger as the first step was necessary for Canon to gain control over TMSC, and therefore, by carrying out the first step Canon partially implemented its acquisition of TMSC before notification or approval.

(Source: EU press release dated 27.06.2019)

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