

COMPETITION LAW UPDATES

Quarter 2 (April 2016 – June 2016)

HSA Advocates is a full service firm, led by a collegium of 24 Partners, offering legal services over a wide spectrum of industry verticals, with offices in New Delhi, Mumbai, Kolkata and Bengaluru.

HSA provides comprehensive legal services in Competition Law including advisory and training on compliance related issues, merger control and litigation involving anti-competitive conduct. HSA regularly advises its clients on business contracts, arrangements and business strategies involving Competition Law issues. HSA team members have advised corporates on cartel investigations and abuse of dominance before the CCI. HSA's vast experience in economic and regulatory laws provides an added depth to its lawyers in understanding business and market impact of anti-competitive practices.



AWARDS AND RECOGNITIONS

Chambers Asia Pacific 2016

- Leading law firm - 'Projects, Infrastructure & Energy: India', 'Banking and Finance', 'Corporate/M&A' and 'TMT'
- Noted for – 'Dispute Resolution'

Chambers Global 2016

- Leading law firm - 'Projects, Infrastructure & Energy: India', 'Corporate/M&A', Noted for 'Dispute Resolution'

ACQ Global Awards 2016

- India - Full Service Law Firm of the Year
- Projects Infrastructure and Energy Law Firm of the Year

Legal 500 – Asia Pacific 2016

- Consistently ranked as a Tier 1 law firm - 'Projects & Energy' and as a leading law firm - 'Banking, Finance and Capital Markets, Corporate M&A, Dispute Resolution, Tax and TMT'.

IBLJ 2015 India Law Firm Awards

- Best Energy, Infrastructure and Projects Law Firm of the Year

Lawyer Monthly 2015

- PPP Law Firm of the Year – India

Intercontinental Finance Magazine 2015

- One of ICFM 500 Leading Lawyers

Acquisition International 2015

- Tax Awards 2015 - 'Best Tax Law Firm - India'

Asialaw Profiles 2015

- Highly Recommended Law Firm - 'Banking & Finance, Energy & Natural Resources, IT, Telco & Media and Tax'

International Tax Review 2015

- Highly recommended as a leading law firm - 'Tax'

Who's Who Legal 2015

- Partners ranked for 'Project Finance'

IFLR 1000 2015

- Ranked for 'Banking and Finance' and 'Energy and Infrastructure'

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**QUARTERLY UPDATES ON THE DEVELOPMENTS IN THE COMPETITION LAW
DOMAIN**

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I. Investigations initiated under Section 26 (1) of the Act

1. CCI initiates investigation against Monsanto Biotech

Kaveri Seed Company Limited, Ajeet Seeds Private Limited & Ankur Seeds Private Limited Vs. Mahyco Monsanto Biotech (India) Limited & Others

CCI, pursuant to its power under Section 26 (1) of Act has initiated an investigation against Mahyco Monsanto Biotech (India) Limited and its sister concerns for alleged contraventions of Sections 3 and 4 of the Act. Informants alleged that OPs had abused their dominant position by imposing unfair and discriminatory conditions in the Sub-License Agreements through which Bt technology is sub-licensed to the seed manufacturing companies in India. It was also alleged that the OPs charged unfair trait value, restricted scientific development relating to Bt cotton technology as well as Bt cotton seeds and denied market access by leveraging their dominant position to expand their practice in Bt cotton seeds market. The Informants further alleged that OPs entered into exclusive supply agreement and ‘refused to deal’ arrangements with Indian seed manufacturers and reserved the right to fix price of seeds in certain circumstances. CCI has directed the DG to investigate the matter.

2. CCI initiates investigation against ABB’s listed Indian subsidiary engaged in electrical equipment manufacturing

InPhase Power Technologies Private Limited Vs. ABB India Limited

Informant deals in designing, developing and manufacturing of Power Quality and Power Conversion products indigenously in India and supplies them to industries like railways, automobiles, steel, cement etc. OP is a listed company and a subsidiary of Swiss based ABB Group engaged in the business of manufacturing of electrical equipment like switch gears, drives, automation etc. The Informant has developed a Static Synchronous Compensator which they claim to be more advanced than the OP’s in terms of technology and features. Also, the Informant has applied for a patent for its said product.

The Informant has alleged that the OP has abused its dominant position by instituting civil and criminal litigation with *malafide* intention to stop the Informant from doing business and has obtained an ex-parte ad interim injunction order dated July 25, 2015 which has put the Informant on the verge of bankruptcy. The Informant has provided to the CCI, OP’s market dominance of 32% relying upon “Research Report of Ken Research (2015)”. It has also been alleged that the OP has threatened to stop supplies to its customers if they deal with the products of the Informant. The Informant has pointed out 23 differences between the products of the OP and the Informant and submitted that there lies no patent violation nor any theft of information. Informant has also filed an appeal before the High Court of Karnataka challenging the order of the City Civil and Sessions Judge, Bengaluru. The Informant has submitted that the OP has distributed some letters and other written material apart from making personal calls to the customers and suppliers stating that the Informant is an illegal and sham company.

CCI has directed the DG to initiate an investigation into the matter.

II. Investigations closed by the CCI under Section 26 (2) of the Act

S. No.	Name of the parties	Relevant Sector	Relevant Market	CCI’s Decision/ Reasoning
1	Case No. 94/2015 In Re: Gujarat State Fertilisers & Chemicals	Fuel Energy	The market for supply and distribution of re-gasified liquefied natural gas for industrial	Informant is engaged in the business of fertilizers and chemicals and have executed a gas sales agreement (GSA) with OP. It was alleged by the Informant that the OP had indulged in anti-competitive practices as it imposed unfair and discriminatory

S. No.	Name of the parties	Relevant Sector	Relevant Market	CCI's Decision/ Reasoning
	<i>Limited Vs. Gail (India) Limited</i>		consumers in Vadodara.	conditions in the said agreement. However, CCI stated that mere technical non-compliance of certain terms and conditions of GSA cannot be a subject matter under Section 4 of the Act if the conduct arising out of the same is not abusive and closed the matter.
2	Case No.99/2015 <i>In Re: Paharpur-3P, Paharpur Cooling Towers Limited Vs. Gail (India) Limited</i>	Fuel Energy	Supply and distribution of natural gas to industrial consumers in Gaziabad.	Informant is engaged in the business of manufacture and sale of flexible packaging for which it needed energy, and OP is a gas distributor. A GSA was executed between the Informant and OP to procure natural gas for power consumption. It was alleged by the Informant that OP had unfair and discriminatory conditions in the GSA which raised competition concerns. CCI stated that there was no record to prove that OP's conduct fell under Section 4 of the Act and closed the matter.
3	Case No. 22/2016 <i>In Re: Actuate Business Consulting Private Limited & Abha Kathuria Kohli Vs. Ambika Trading & Construction Company Private Limited</i>	Real Estate	Provision of market for development and sale of residential units in Nainital	Informants had booked 2 cottages in the residential project developed by OP and there was a delay in providing possession. Informant has alleged that despite discussions and communication; OP has failed to execute the sale deed. CCI stated that OP was not in a position to act independent of the market forces and there was also no evidence to point out that the OP enjoyed a dominant position. Therefore, there existed no reason to assess abusive conduct in the first place and closed the case.
4	Case no.97/2015 <i>In Re: Southwest India Machine Trading Private Limited Vs. Case New Holland Construction Equipment (India) Private Limited</i>	Industrial construction	i. Manufacture and sale of Vibratory Soil Compactors in India. ii. Manufacture and sale of Vibratory Soil Compactors Backhoe Loaders in India.	Informant had placed purchase orders for two industrial products with OP which was accepted by OP unconditionally. After supplying few units of one industrial product, OP informed that it would not sell the remaining units as Informant had auctioned these products outside India which caused losses to it. Informant alleged that OP had imposed such restrictive conditions and not only tried to limit and control the supply but also attempted to allocate geographic areas ¹ . CCI stated that another company (JCB) was in a dominant position in the said relevant markets and not OP. Further, there was no evidence to prove any AAEC

¹ An attempt to allocate a geographic area may be reviewed as market fragmentation under Section 3 (3) (c) of the Act.

S. No.	Name of the parties	Relevant Sector	Relevant Market	CCI's Decision/ Reasoning
				concerns. Hence, CCI disposed off the information.
5	<i>Case No.23/2016 In Re: Confederation of Real Estate Brokers' Association of India Vs. Magicbricks.com & Ors.</i>	e-commerce Real Estate	Service of real estate brokers/agents in India.	Informant is a confederation of 35 real estate brokers' association whereas OPs are various online portals engaged in real estate activities. OPs advertised 'No Brokerage Policy' on their respective websites because of which the Informant faced losses. It was alleged that OPs had imposed unfair and discriminatory conditions on traditional real estate brokers. CCI stated that OPs websites were not even in 'top 100' real estate websites, which meant that there was no question of dominance in the first place. The case was, therefore, closed.
6	<i>Case No. 27/2016 In Re: Mr. Bosco Joseph Vs. Union of India, Department of Legal Affairs, Ministry of Law & Justice & Ors.</i>	Real Estate	Not defined	The Informant sold khadi products from a rented shop owned by OP6 (Raj Kumar), who by a valid court order evicted Informant from the said shop. Informant alleged that OP is abusing its dominance as he owned 6 shops in that area where Informant operated and is misusing it by not renting the said shops. Also, the small scale businessmen who were engaged in the same business as of Informant (food, eateries) were getting eliminated from the market. It was alleged that OP6 formed cartel with other OPs and indulged in anti-competitive practices. CCI stated that no competition case was made out against OPs and dismissed the matter.
7	<i>Case No. 04 of 2016 In Re: Mr. Vishwambhar M. Doiphode Vs. Vodafone India Limited</i>	Telecom	Market for provision of international mobile data services in Mumbai.	Informant was the customer of OP's telecom services since 19 years. Before leaving for Canada, Informant had asked OP to activate international mobile data services for his convenience. When he returned to India his bill came around INR 60,000. He then noticed that international services were not activated and the Informant stated that OP could not give any justification as to why the services were not activated. CCI stated that customers can access world web either through a landline connection or a cellular connection as these are considered substitutes to mobile data. Thus, consumer choices prevail in the said relevant market. CCI also stated that the Informant had not furnished any material

S. No.	Name of the parties	Relevant Sector	Relevant Market	CCI's Decision/ Reasoning
				that showed the dominant position of OP and hence closed the case.
8	<i>Case No. 28 of 2016 In Re: Mr. A. S. Sharma Vs. M/s Prateek Realtors India Private Limited & Ors.</i>	Real Estate	Services for development and sale of residential unit in Noida and Greater Noida.	Informant had alleged that OP1 had contravened provisions of Section 4 of the Act. Informant had booked an apartment in the housing complex developed by OP1 and it had abused its dominance in the said relevant market by forcing the Informant to sign an anti-competitive apartment allotment agreement. The terms and conditions of the agreement made exit impossible for the Informant and the terms of the agreement were unreasonable in nature. It was also alleged that the agreement contravened provisions of UP Apartment (Promotion of Construction, Ownership and Maintenance) Act, 2010. CCI held that there were no allegations against OP 2 and OP 3; and there was not enough evidence to show that OP1 had abused its dominance as substitutes existed in the relevant market and multiple options were available for the consumers. CCI closed this matter.
9	<i>Case No. 30 of 2015 In Re: M/s. K Sera Sera Digital Cinema Private Limited Vs. Digital Cinema Initiatives, LLC & Others</i>	Digital Cinema	Market of digital cinema service providers	Informant is one among India's leading digital cinema service providers having tie up with 300 cinema theatres across India. OP1 is a joint venture formed by the parent companies of OP2 to OP7, engaged in the business of release and distribution of movies produced by their parent companies in India. Informant has alleged that OP1 is a cartel formed to dominate and monopolize the market of digital cinema exhibition in India as OP2 to OP7 have entered into an anti-competitive agreement in the form of OP1 to release their movies in India in digital format only through Digital Cinema Initiative (DCI) compliant servers and projectors. This has forced the Indian companies to adhere to their standard which is in contravention to Section 4(2)(b) of the Act. CCI observed that the Informant was aware at the time of entering the relevant market that OPs were not releasing their movies in non-DCI compliant equipment. However, the Informant preferred not to use DCI-compliant equipment. Further, Informant has been unable to disclose any evidence which can show that there exists an

S. No.	Name of the parties	Relevant Sector	Relevant Market	CCI's Decision/ Reasoning
				agreement among OPs which can be considered anti-competitive and in violation of Section 3(4) of the Act. Further, the information does not disclose any case of abuse of dominant position in terms of Section 4 of the Act. Hence, disposed the information.
10	<i>Case No. 35 of 2016 In Re: Shri Kamble Sayabanna Kallappa Vs. M/s Bennett Coleman and Company Limited</i>	Real estate	Not determined	Informant is the buyer of the newspaper 'The Times of India' (TOI) of OP. The Informant stated that there prevailed a combo offer, wherein, with TOI, anyone can buy one of the 3 magazines which OP publishes. But in order to increase sales of 1 magazine (Mumbai Mirror), the newspaper vendors started selling this combo pack with only Mumbai Mirror and excluded the other 2 magazines. CCI stated no case was made out against OP and closed the case.

III. Investigations closed under Section 26 (6) of the Act

CCI closes alleged abuse of dominance investigation against REC

XYZ Vs. REC Power Distribution Company Limited

This case was filed by XYZ (Informant) under Section 19 (1)(a) of the Act against REC Power Distribution Company Limited (“**RECPDCL**”), the OP, alleging contravention of Section 4 of the Act. RECPDCL is a wholly owned subsidiary of Rural Electrification Corporation Limited (“**RECL**”). However, according to the Informant, OP was using RECL just to secure its consultancy services. The Informant mentioned that competition in the market is distorted since RECPDCL had secured various orders like the Rajiv Gandhi Grameen Vidyutikaran Yojana (“**RGGVY**”) scheme only because RECL is the nodal agency for the implementation of RGGVY. Informant alleged that RECPDCL was being nominated by the state utilities as opposed to the general tender process that is required to be followed by all other consultancy service providers. According to the Informants, this led to denial of market access. CCI on January 13, 2015 directed the DG to investigate the matter under Section 26(1) of the Act.

The DG’s investigation report stated that RECL/RECPDCL were both responsible for anti-competitive conduct, enjoyed a dominant position in the market and fell within the ambit of the term enterprise under Section 2 (h) of the Act. The DG report concluded that RECL and RECPDCL constituted a group under Section 4 of the Act. Based on Market Structure Analysis, DG held that the relevant upstream market in this case is *the market for financing of rural electrification projects under RGGVY/ Deendayal Upadhyaya Gram Jyoti Yojana (“**DDUGJY**”) schemes*. Further, for the implementation of the RGGVY/DDUGJY, consultancy services were required and, therefore, DG stated that, the *market for consultancy services for rural electrification projects under RGGVY/DDUGJY* was the relevant product market.

DG noted that 90% of the project cost is provided by RGGVY as a subsidy by the government and the State distribution companies (“**Discoms**”) were to arrange their own 10% or could take loan from a financial institution. Based on the analysis of how most of the Discoms ended up depending on RECL and,

therefore, made OP the first preference in terms of loan component, DG concluded that OP clearly had dominant position in the market.

CCI took into account the demand side substitutability assessed on the basis of physical characteristics, price and intended use of the product and observed that relevant product market was to be defined from the point of view of the consumer. CCI held that detailed project reports, project management consultant and third party inspection were different from one another and therefore could not be one relevant market.

DG's report had concluded that RECL dominance in rural electrification financing was directly translating into the award of consultancy work by the Project Implementing Agencies to RECPDCL. In the absence of any evidence to support the contrary, the DG relied on these circumstantial evidence to establish that the OP group was using its position of dominance in the market of financing of rural electrification projects in India under RGGVY/DDUGJY to protect the market for consultancy services for rural electrification projects under RGGVY/DDUGJY in India, in violation of Section 4(2) (e) of the Act.

CCI, on the other hand, was of the opinion that there was no concrete evidence to establish that OP had leveraged its dominant position in the first relevant market to enter into or protect the second relevant market. CCI held that there was no violation of Section 4(2)(e) of the Act. CCI held that the absence of conduct by the OP which lead to reduction in market share could not be inferred as anti-competitive conduct on part of the OP. It was also held that the reason advantage was given to the RECPDCL by Discoms was because of the structure of the market and, therefore, cannot be construed as abuse on behalf of the OP group.

IV. Decisions by Competition Appellate Tribunal

1. COMPAT in tandem with DG's report, allows appeal in Fuel Surcharge

Interglobe Aviation Limited Vs. CCI and Ors.

The appeal arose from the CCI order that held that some airline companies were engaged in cartelization as they had fixed and revised Fuel Surcharge ("FSC") and, thus, contravened Section 3 of the Act. On initiation of the investigation, Jt. DG issued notices to the airlines for furnishing some documents and also to the respective authorities/associations to supply some essential information and documents. The Jt. DG considered that many factors such as freight tariff, nature of cargo, weight of cargo, deal rates being offered to agents make the overall price of the air cargo transportation by airlines highly variable and dynamic in nature. The Jt. DG submitted to the CCI that FSC contributed about 20% to 30% to the overall price of the air cargo transportation, concluding that FSC is a significant component and should not be ruled out in regards to concerted action.

The Jt. DG stated that price of Aviation Turbulence Fuel ("ATF") was the main factor which was considered by the airlines in order to increase FSC. Additionally, several other factors like financial health of company, USD-INR exchange rate, cost environment and market feedback were also taken into account by the airlines, but none of the airlines could produce any evidence supporting this claim. Hence, Jt. DG concluded that there was no systematic process followed in order to fix FSC. However, the Jt. DG could not confirm the allegations of the Informant from his findings as there was no direct or indirect evidence to conclude that there existed a cartel and specified that the Appellants' operations were not anti-competitive in nature.

CCI disagreed with Jt. DG's report and passed an order stating that the Appellants acted in a concerted manner in fixing and revising the FSC rates and also imposed a penalty @ 1% of the average of turnover of the last 3 financial years on the appellants. However, the COMPAT observed that the findings in the Jt. DG's report proved that there was no concerted action amongst the Appellants and allowed the appeal remanding back the matter to CCI with a direction to reconsider the DG's report.

2. COMPAT upholds CCI's decision against DIAL

Airline Operators Committee Vs. CCI & DIAL

The Informant-Airline Operators Committee (“AOC”), which facilitates and handles passengers, cargo, mail, baggage etc., alleged that the OP- Delhi International Airport Limited (“DIAL”), which is a company engaged in the business of operating and managing Indira Gandhi International Airport, Delhi (“IGIA”), abused its dominance by providing office space to some of the airlines at a higher rental charge. The Informant stated that revisions to the license fee for the spaces allotted was arbitrary, exorbitant and anti-competitive in nature.

CCI observed that though the OP was dominant in the relevant market, i.e. office space provided to the airlines for non-aeronautical services at T3, IGIA, New Delhi, there was no abuse of such dominance as mere increase in the license fee/ office rental cannot be termed as anti-competitive. The main issue was that there existed a license agreement between DIAL and all the member airlines, of which the terms and conditions specified that there should be 7.5% increase per annum. in regards to the office rental charge. CCI on this issue stated that this stipulation was only in force when the agreement was still subsisting. Where a fresh agreement is entered/renewed and a new term period is specified, DIAL has full freedom to charge license fee more than 7.5% as this stipulation becomes inoperative. Thus, CCI viewed that no case was not made out against the OP.

CCI's decision was upheld by COMPAT and it stated that the revised license fee was payable in accordance with the terms of agreement between DIAL and the member airlines. In addition to this, COMPAT observed the Appellant had not placed any evidence showing the market conditions. Thus, there was no question of arbitrariness or anti-competitive practices carried on by OP and, hence, COMPAT dismissed the appeal.

3. COMPAT upholds CCI's order in Airline recruiting case

Air India Limited Vs. CCI & Ors.

Informant (Air India Limited) had alleged that conduct of OP (Interglobe Aviation Limited) was anti-competitive in nature in relation to the pilot's agreement. The terms of the agreement were stringent as well as they restricted competition in the market. The Informant stressed upon the fact that whosoever joins the pilot training programme of OP is required to enter into this agreement and furnish a letter of indemnity and guarantee. It was alleged that OP has abused its dominant position in the civil aviation market by resorting to predatory recruitment of the pilots serving with the Appellant and other airlines, by offering attractive pay structure to them.

CCI did not find any competition issue in the case as an airline recruiting another airline's pilots would not bring any structural changes in the operations of the market. CCI also observed that there was no restriction on any airline from recruiting pilots belonging to other airlines as the practice of 'No objection Certificate' ensured flexibility in regards to the recruitment process.

COMPAT upheld CCI's decision and stated that firstly, there was not enough evidence put on record by the Appellant to prove the contrary and secondly, there was no need to intervene because an airline recruiting another airline's pilots will not affect market dynamics in anyway. Additionally, this was regarded as more of an employment issue. Hence, COMPAT dismissed the appeal.

4. COMPAT finds Adani Gas guilty of abuse of dominance

Adani Gas Limited Vs. CCI

Informant (Faridabad Industries Association) had alleged before CCI that Adani Gas Limited, engaged in the business of distribution of gas to industrial, commercial, and CNG customers, had contravened the provision of Section 4 of the Act. Informant stated that the GSA had unconscionable terms and conditions. It was alleged that there was an arbitrary increase in the gas price. CCI found this case to be a prima facie case for investigation and directed DG to investigate the matter.

CCI held that OP had a dominant position in the relevant market which was *market of supply and distribution of natural gas to industrial consumers in the Faridabad district*. In addition, the agreement was also found to be anti-competitive in nature. CCI imposed a penalty @ 4% of the average turnover of last 3 years on OP.

On appeal, COMPAT found that Appellant had contravened the provisions of Section 4 of the Act and upheld CCI's decision. COMPAT observed that the evidences placed on record by the Appellant were not public documents and the affidavits filed along with the application had defects in them. Also, the statistics/ data placed on record were not supported by any proof and, therefore, were not relied upon.

5. COMPAT partly allows appeal on grounds of disproportionate imposition of fine

Bengal Chemist and Druggist Association & Ors. Vs. CCI & Ors.

The Bengal Chemist and Druggist Association (BCDA) had filed an appeal against the order passed by the CCI under Section 27 of the Act. CCI had found that BCDA and its District Zonal Committees were engaged in anti-competitive practices, which were in violation of Section 3(3) (a) and (b) read with Section 3(1) of the Act. CCI had imposed a penalty on BCDA and its office bearers @ 10% of the average turnover/ income and on the members of the Executive Committee @ 7% of their respective income / receipts. CCI found that BCDA prohibited wholesalers/retailers from selling drugs at a rate below the MRP which according to the sellers, prohibited competition in the market. Also, BCDA circulated a notice pleading ignorance of law with regards to competition. However, BCDA did mention that the only reason for prohibiting discounts was that the generic manufacturers that fell under their association would suffer grave loss.

The Appellants questioned the order passed by the CCI on violation of grounds of natural justice and unreasonable and disproportionate imposition of fine. COMPAT relied on the case, *Shib Shankar Nag Sarkar and Anr. Vs. Competition Commission of India & Ors.*² and held that the Jt. DG did not have the jurisdiction to issue notices to the Appellants under Section 48(1) of the Act to make the Appellants produce evidence to prove contravention of Section 3(3)(a) and (b) read with 3(1). It was also held that the entire investigation was conducted with an assumption that the Appellants were responsible for contravention of the given Sections.

The appeal was partly allowed and the penalty imposed on the office-bearers and the members of the Executive Committee of BCDA was set aside and the penalty imposed on BCDA was reduced from 10% to 1% of its average turnover for the last three preceding financial years. The finding related to BCDA's actions contravening Section 3(3) (a) and (b) read with 3(1) was upheld.

6. COMPAT emphasizes principles of natural justice and allows Coal India appeal

Coal India Limited & Ors. Vs. CCI & Ors.

Maharashtra State Power Generation Company Limited (OP2) filed information with the CCI on January 16, 2012 under Section 19 of the Act alleging abuse of dominant position by Mahanadi Coalfields Limited and Coal India Limited ("CIL"). Five days later they filed another information against Western Coal Limited and CIL alleging abuse of dominance. Gujarat State Electricity Corporation Limited on the

² COMPAT Appeal No. 34 of 2014

September 12, 2012 filed an information with the CCI alleging abuse of dominance by CIL and its three subsidiaries, Mahanadi Coalfields Limited, Western Coalfields Limited, and South Eastern Coal Fields Limited.

Upon investigation, DG issued notices under Section 41(2) read with Section 36(2) of the Act and called upon the Appellants to file their responses to the allegations. DG was of the view that the OPs had violated Section 4(2)(a)(i) whereby they had imposed unfair and discriminatory conditions. Based on the DG's report, CCI imposed a penalty @ 3% of the average turnover for the last 3 years as the conduct of the OPs was in contravention of Section 4(2)(a)(i) of the Act. CCI mentioned that it was aware of the regulatory environment in which CIL operated, however, it was also aware of the independence CIL had in carrying out commercial and contractual affairs.

CIL filed an appeal against the CCI wherein apart from other issues, it alleged violation of the natural justice on the principle, "the one who hears must decide". COMPAT held that the participation of CCI members in passing orders in the matter they had not heard was not justified simply on the grounds that they had heard the parties in other similar matters. COMPAT also mentioned the importance of the principles of natural justice, stating that they are mandatory to be followed. COMPAT reiterated Hon'ble Supreme Court's stand that the presumption that CCI is an executive/administrative body and does not need to adhere to the principles of natural justice is incorrect. Based on multiple discussions and relying on various cases COMPAT allowed the appeal and remitted the matter to CCI afresh.

7. COMPAT allows Alkem Labs appeal citing natural justice violation

M/s. Alkem Laboratories Limited Vs. CCI & Ors.

In the complaint before CCI, the Informant-Mr. P.K. Krishnan, who was a distributor/stockist of pharmaceuticals/medicines alleged that Alkem Laboratories Limited ("Alkem Labs"), one of the Appellants, had indulged in anti-competitive practices whereby it refused to deal with the Informant to supply it with pharmaceuticals products. The Informant also alleged that it had sent a demand draft which was rejected by Alkem Labs for the reason that Informant was unable to obtain no-objection certificate ("NOC") from All Kerala Chemist and Druggist Association ("AKCDA"). Informant contended that such practice of NOC was anti-competitive as it created hindrance for the new market entrants, and AKCDA and Alkem Labs were in contravention of Section 3 of the Act.

The DG observed that there were numerous emails/communications/documents serving as evidences for the practice of NOC. CCI held Alkem Labs conduct was anti-competitive and stated that AKCDA indulged into anti-competitive practices whereby it pressurized the pharmaceutical companies to forcefully adhere to its demands and it threatened to boycott their products. A penalty of INR 74 crore³ was imposed on Alkem Labs and separately fines were imposed on AKCDA and one of its officials.

On appeal, COMPAT held that the Informant had deliberately held back evidence showing that the Appellant had no role in the Informant's business and suppressed material in order to mislead CCI. In addition, it was noted that there was not enough evidence produced by the DG against the Appellants. Further, COMPAT stated that by penalizing AKCDA and its office bearer, CCI had violated principles of natural justice, as CCI had not intimated AKCDA or its office bearer that Section 48(1) of the Act has been invoked against them. Hence, the appeal was allowed and the impugned order was set aside.

³ This is equivalent to USD 11 million

V. Combinations filed with CCI during April 2016 - June 2016

Combinations filed between April – June’16	26
Combinations orders between April – June’16	26

*As on 30th June 2016

VI. International updates

Korea

Korea’s Fair Trade Commission fines cardboard cartel

Korea’s Fair Trade Commission fined 45 corrugated cardboard suppliers € 78.8 million for participating in a cartel which led to rigging the price of cardboard boxes and paper from 2007 to 2014. The price rise led consumers to pay a price which was 6 to 20 percent more for the particular products.

Mexico

Mexico’s Federal Economic Competition Commission fines companies for sugar price fixing

Mexico’s Federal Economic Competition Commission fined seven companies, 10 individuals and a trade industry €4.23 million for price fixing and restricting the supply of sugar in Mexico. Bumper sugar crops in 2012-2013 ensured a sharp decrease in sugar prices. However, the companies agreed to fix the price of wholesale sugar packages and to restrict the sugar supplied to wholesalers to escape sugar being sold downstream at a lower price. The companies had created a sales table mechanism through which they exchanged information on sugar sales, prices etc., and admitted to the allegations of price fixing and restricting sugar supply. The estimated damage to the consumers was €41.58 million.

Australia

a) The Federal Court of Australia fines Woolworths \$9 million

The Federal Court asked Woolworths Limited (“**Woolworths**”) to pay penalties amounting to AUD \$9 million for contraventions of the Trade Practices Act 1974 (now the Competition and Consumer Act 2010), consequent to admissions made by Woolworths in proceedings brought by the Australian Competition and Consumer Commission (“**ACCC**”). Woolworths admitted to being aware of an understanding between Colgate-Palmolive Pty Limited (“**Colgate**”), PZ Cussons Australia Pty Limited (“**Cussons**”) and Unilever Australia Limited (“**Unilever**”) that they would each cease supplying standard concentrate laundry detergents to Woolworths in early 2009 and supply only ultra concentrates to Woolworths. ACCC had commenced proceedings in December 2013 in the Federal Court against Colgate, Cussons, Woolworths and others alleging that Colgate, Cussons and Unilever made and gave effect to a cartel and other arrangements to cease supplying standard concentrate laundry detergents in the first quarter of 2009 and supply only ultra concentrates and to sell ultra concentrates for the same price per wash as the equivalent standard concentrated products. The cost savings were not passed to the consumers. ACCC Chairman Rod Sims said that *“This penalty is the largest the ACCC has obtained against a party that was an accessory to competition law breaches by being knowingly concerned in anticompetitive conduct⁴.”*

b) ACCC commenced proceedings against Heinz for misrepresentations

⁴ <http://www.accc.gov.au/media-release/woolworths-ordered-to-pay-9-million-in-penalties-in-laundry-detergent-cartel-proceedings>

ACCC commenced proceedings in the Federal Court against H.J. Heinz Company Australia Limited (“**Heinz**”) regarding its Little Kids Shredz products alleging Heinz made misleading representations regarding the nature, characteristics and suitability of the products, in contravention of the Australian Consumer Law. The Shredz products’ packaging features prominent images of fresh fruit and vegetables stating “*Our range of snacks and meals encourages your toddler to independently discover the delicious taste of nutritious food*”. ACCC alleged that the Shredz products represent to “*consumers that the products are of an equivalent nutritional value to fruit and vegetables and hence a nutritious meal for toddlers, when this is not the case*”. ACCC Chairman Rod Sims said that “*The ACCC wants to make clear that major companies have an obligation under the Australian Consumer Law to ensure products’ health claims do not mislead the public. As part of the ACCC’s current focus on consumer protection issues arising from health claims by large businesses, we are particularly concerned about potentially misleading health claims for products being marketed for very young children*”⁵.

France

France’s Competition Authority fines Umicore for abuse of dominance in zinc roofing market

France’s Competition Authority fined zinc producer Umicore €69 million for abusing its dominant position in the markets for zinc-based roofing products and rainwater systems. It was held that the company’s practices with its distributors was “based on threats and retaliation”. Umicore had constrained distributors selling VM Zinc products from also supplying its rivals’ products between 1999 and 2007. Its taming policy towards VM Zinc distributors (about 70 per cent of zinc construction materials suppliers) ensured compliance with its exclusive purchasing obligations which drove other competitors out of the market. It was held that Umicore’s distribution contract barred stockists from supplying competing products and required them to always have exclusive stock of VM Zinc products.

VII. Publications and Articles

ETHealthworld.com (April issue): *Reverse payment deals in patent disputes and its impact on Competition*⁶ by Sakya Chaudhuri, Ikleen Kaur and Shuchi Singh

⁵ <http://www.accc.gov.au/media-release/accc-takes-action-against-heinz-over-nutritional-claims-on-food-for-1-3-year-olds>

⁶ Available at <http://www.hsalegal.com/index.php/ethealthworld-com-reverse-payment-deals-in-patent-disputes-and-its-impact-on-competition/>

GLOSSARY OF TERMS

AAEC	Appreciable Adverse Effect on Competition
ACCC	Australian Competition and Consumer Commission
Act	Competition Act, 2002
AKCDA	All Kerala Chemist and Druggist Association
Anr	Another
AOC	Airline Operators Committee
AOD	Abuse of Dominance
ATF	Aviation Turbulence Fuel
CCI	Competition Commission of India
COMPAT	Competition Appellate Tribunal
DCI	Digital Cinema Initiative
DDUGJY	Deendayal Upadhyaya Gram Jyoti Yojana
DG	Director General
DIAL	Delhi International Airport Limited
DPR	Detailed Project Reports
FSC	Fuel Surcharge
GSA	Gas Sales Agreement
INR	Indian Rupee
Jt. DG	Joint Director General
NOC	No Objection Certificate
OP	Opposite Party
Ors.	Others
RECPDCL	Rural Electrification Corporation Power Distribution Company Limited
RGVY	Rajiv Gandhi Grameen Vidyutikaran Yojana
USD	United States Dollar
Vs.	Versus

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