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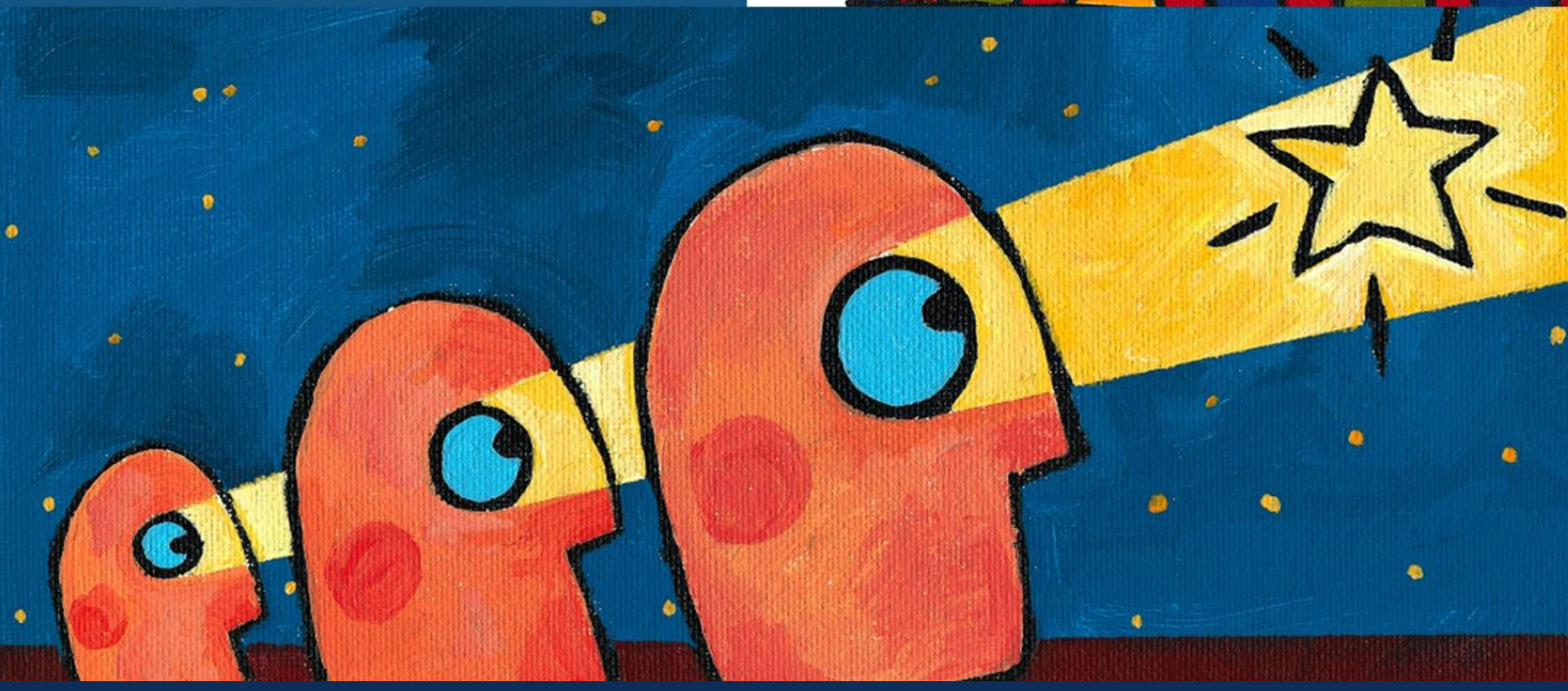

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CCI delivers its first decision for 'Resale Price Maintenance' by penalizing Hyundai for Rs 87 Crore

The competition regulatory body imposed a penalty on Hyundai for fixing discounts and tying-in of lubricants.

BETWEEN THE LINES

EC imposed a penalty of €27 million on three car lightning system producers in cartel settlement

European Commission penalized the members of automotive lighting cartel

HEARD AT THE BAR

Spain Competition Authority imposed a penalty of €1.74 million on Nokia for abuse of dominant position

Competition and Market Authority imposes a fine of £2.7 million on National Lightning Company for Resale Price Maintenance

And more....

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CCI delivers its first decision for 'Resale Price Maintenance' by penalizing Hyundai for Rs 87 Crore

Through an Order dated 14.06.2017, the Competition Commission of India ('CCI') has imposed a penalty on Hyundai Motor India Limited (HMIL) of Rs. 87 Crores for indulging in the practices of Resale Price Maintenance (RPM) and tying-in, in contravention of the provisions of Section 3(4) (a) and 3(4) (e) read with Section 3(1) of the Competition Act, 2002 ('Act').

As per the Order, two separate Informations were filed against HMIL, by authorised HMIL dealers, Information-1 (Info-1) by 'Fx Enterprise Solutions India Pvt. Ltd.' and Information-2 (Info-2) by 'St. Antony's Cars Pvt. Ltd.' It was alleged in Info-1 that HMIL had entered into exclusive dealership arrangements with its dealers who were required to obtain prior consent of HMIL before taking up the dealerships of another brand. It was further alleged that the HMIL also imposed a "Discount Control Mechanism" ('DCE') through which dealers were only permitted to provide a maximum permissible discount and were not authorised to give discounts above the recommended range, thereby, resulting in RPM in contravention of Section 3(4)(e) of the Act. Further, it was alleged that the dealers of HMIL were bound to procure spare parts, accessories and all other requirements, either directly from HMIL or through vendors approved by the HMIL, in contravention of Section 3(4)(a) of the Act. In Info-2, it was alleged that Clause 5(iii) of the Dealership Agreement prohibited the dealers from investing in any other business, particularly in dealerships with competitors of the HMIL, which resulted in "refusal to deal", in contravention of the provisions Section 3(4)(d) of the Act. After considering both the Informations, CCI formed a *prima facie* opinion that HMIL was in contravention of the provisions of Section 3(4) read with Section 3(1) of the Act and directed the Director General ('DG') to cause an investigation into the matter.

The DG found that Clause 5 (iii) of the Dealership Agreement amounts to an'exclusive supply arrangement' under Section 3 (4)(b) of the Act and 'refusal to deal' under Section 3 (4) (d) read with Section 3(1) of the Act. The DG further found that DCE imposed by HMIL on its dealers is an arrangement of implementing RPM which violates Section 3 (4)(e) read with Section 3(1) of the Act. The DG also found that the HMIL had entered into tie-in arrangements with regard to sale of cars, installation of CNG kits, sale of lube oils and sale of insurance policies. The DG found that these tie-in arrangements amounted to exclusive supply agreement and refusal to deal and , therefore , violated Sections 3(4) (b) and 3(4) (d) of the Act. Furthermore, the DG found that the HMIL is 100% dominant in the aftermarket for after sale services of Hyundai brand of cars and abusing its dominant position through tie-in arrangements, thus, violating Sections 4(2)(a)(i), 4(2)(a)(ii) and 4(2)(c) of the Act.

CCI observed that it had neither directed the DG to investigate into the violations of the provision of Section 4 of the Act nor there were any allegations put forth by Informants regarding abuse of dominant position. For this observation, the CCI followed the judgement of Hon'ble Supreme Court of India in the case of '*Competition Commission of India v. Steel Authority of India & Ors'* stating that "*the Director General is expected to conduct an investigation only in terms of the directive of the Commission and , thereafter, inquiry shall be deemed to have commenced, which continues with the submission of the report by the Director General, unlike the investigation under the MRTP Act, 1969, where the Director General can initiate investigation suo moto"*. For Clause 5(iii) of Dealership Agreement, the CCI was of the opinion that it does not impose an exclusive supply obligation or a refusal to deal because stipulation of such clause ensures that HMIL is updated with the financial and investment activities of its dealers to ensure that funds meant for functioning of the dealership business are not diverted elsewhere. For the allegation of DCM, CCI determined that HMIL has sought to impose an arrangement that has resulted in RPM, which includes monitoring of the maximum permissible discount level through DCM and a penalty punishment mechanism upon non-compliance of the discount scheme. The arrangement perpetuated by HMIL in fixing the resale price of Hyundai brand of cars foreclosed the intra-brand price competition for its dealers thereby contravening the provisions of Section 3(4)(e) read with Section 3(1) of the Act. For the allegations of tie-in arrangements of CNG kits, insurance company and lubricant oils, CCI observed, for tying in of CNG kits, that the arrangement was not resulting in tie-in arrangement because when alternative brands of CNG kits are used, HMIL had to bear the cost of warranty. Further for tying in of insurance CCI observed that mere recommendation of dealing with the insurance companies partnered with the HMIL, will not amount to tie-in arrangement. For tying in of lubricant oils CCI found that HMIL had directed its dealers to use particular lubricants and penalised them for using non-recommended oils, which amounts to "tie-in arrangement" in contravention of Section 3(4)(a) of the Act. After considering all the material on record, the CCI found HMIL in violation of Section 3(4) read with Section 3(1) of the Act and directed HMIL to cease and desist from indulging in anti-competitive conduct and imposed a penalty of Rs. 87 Crores , pegging it at the rate of 0.3 % of its average *relevant turnover* of the last three financial years. (*Case No. 36 & 82 of 2014*)

Heard at the BAR

Legal news from India and the world

Competition authority of Spain imposes fine of €1.74 million on Nokia Solutions and Networks Spain for abuse of dominant position On 15th June, 2017, the National Commission on Markets and Competition ('CNMC') fined Nokia Solutions and Networks Spain for €1.74 million for abuse of dominant position. This penalty follows the complaint lodged by the company Kapsch Carriercom España, SLU (Kapsch) with respect to tender called by the Administrator of Railway Infrastructures (ADIF) for the provision of maintenance and renovation services of the facilities GSM-R mobile telecommunications and core GSM-R core systems in July 2014. The GSM-R network in Spain has been installed through various tenders by two companies: Nokia, with 85% of the network, and Kapsch, with the remaining 15%. Until July 2014, the tender held by each company was responsible for maintaining 100% of the network it had installed. In July 2014, ADIF called for the maintenance and renewal of the GSM-R mobile telecommunications systems of the high-speed rail network. Nokia by narrowing margin raised wholesale and retail prices that prevented rivals from competing in the retail market for maintenance of GSM-R mobile telecommunications facilities in Spain. Consequently, only Nokia competed in the Adif tender. Therefore, Nokia's behaviour was likely to have an exclusionary effect on its rival and distorting competition by violating Article 102 of the Treaty on the Functioning of the European Union (TFEU) and committed an infringement of Article 2 of the Law on the Defence of Competition (LDC) *(CNMC Press release, dated 15.06.2017)*

Commission for Protection of Competition, Macedonia imposes a fine of €2.7million on Prilep Brewery AD Prilep On 22nd, May, 2017, Commission for Protection of Competition, Macedonia (CPCM) fined Prilep Brewery AD (Brewery) for Euros 2.7 million. CPCM determined that,from 13.11.2010 onwards, Brewery entered into agreements on business cooperation with authorized distributors, which contained clause not to compete for indefinite time and imposing condition that the distributor cannot determine the price at which they will resell those products in the market thereby restricting competition. CPCM observed that such clause between manufacturer and distributor not to compete for indefinite time is a vertical agreement aiming at distorting competition. *(CPCM, press release dated 22.05.2017)*

Google fined by European Commission for €2.42 billion for abuse of dominant of position On 27th June 2017, European Commission ('EC') fined Google for abusing dominant position as search engine by giving illegal advantage to its own comparison shopping service. Google earns its revenue from the adverts,that consumers click on, which are shown in response to the search queries on its search engine. In 2004, Google introduced 'Froogle' (now 'Google Shopping') which allowed consumers to compare products and prices online, to find deals. Google changed its policy in 2008 to give prominent placement only to its comparison shopping service and demote rival comparison shopping service. EC held that Google is dominant *in general internet search markets throughout the European Economic Area.* Google allowed its comparison shopping service to make significant gains in traffic at the expense of its rivals and to the detriment of European consumers. EC fined Google for €2,424,495,000 and requires Google to stop its illegal conduct within 90 days of EC's order. Also to comply with the simple principle of giving equal treatment to rival comparison shopping services and its own service. *(European Commission press release, dated 27.06.2017)*

UK's CMA fined National Lightning Company £2.7 million for Resale Price Maintenance On 20th June 2017, Competition and Markets Authority (CMA) imposed a penalty on the National Lighting Company (NLC) for indulging in the practice of Resale Price Maintenance (RPM). As a background, NLC is a company involved in the supplies of light fittings to a range of retailers who further sell them on. NLC imposed a minimum price on online sellers, who then had to retail goods at, or above, that price. NLC also tried to avoid detection by not committing any agreements in writing. CMA issued a warning letter to NLC but it was ignored. CMA, after detailed investigation, found the conduct of NLC to be in contravention and imposed fine of £2.7 million. The fine also covered violations in relation to NLC's Endon and Saxby brands and included an extra penalty because the NLC ignored an earlier warning letter from the CMA. *(CMA Press Release, 20.06.2017)*

EC fined three car lightning system producers for €27 million in cartel settlement

On 21st June, 2017, the European Commission ('EC') fined Hella and Automotive Lightning for total of €26 744 000 for for participating in an automotive lighting cartel. Valeo was not fined as it revealed the cartel to the EC. All three companies admitted their involvement in cartel and agreed for settlement.

The cartel between the three companies was formed for the supply of vehicle lightning systems that included headlamps, daytime running lights, rear lights and high mounted stop lamps, fog lights and auxiliary lights. The cartel concerned the supply of these spare parts to manufacturers of passenger and commercial vehicles after the end of mass production of a car model. The EC's investigation in this case started with an immunity application submitted by Valeo. The EC's investigation revealed that, for more than three years, all the three companies coordinated prices and other trading conditions for the supply of vehicle lighting systems, across the European Economic Area (EEA).

In determination of the fines, the EC considered the companies' sales generated in the EEA from the supply of spare automotive lighting systems to the manufacturers of passenger and commercial vehicles after the end of mass production of a car model. The EC also took into account the serious nature of the infringement, its geographic scope and its duration. Thus, Valeo received full immunity for revealing the existence of the cartel, Automotive Lighting and Hella benefited from reductions of their fines for their cooperation. A total of **€**26 744 000 fine was imposed by EC upon the two automobile companies. *(European Commission Press Release, dated 21.06.2017)*

NCLAT orders stay against the penalty order of CCI in the case of Maharashtra State Power Generation Company Ltd. vs. Coal India Limited & Ors.

On 31st May, 2017, the National Company Law Appellate Tribunal ('NCLAT') passed an order granting stay against the order of Competition Commission of India ('CCI') dated 24th March, 2017, against Coal India limited (CIL) and its subsidiary. Earlier in March, 2017 CCI had fined CIL and three of its subsidiaries for Rs. 591 Crores for imposing unfair/ discriminatory conditions in Fuel Supply Agreements (FSAs) with the power producers for supply of non-coking coal.

Since the Competition Appellate Tribunal (COMPAT) is merged with NCLAT and thus NCLAT is now the Appellate Authority for hearing and disposing of the Appeals against the order/direction/decision passed by CCI. Earlier on 12th, December 2013, CCI passed order against CIL imposing penalty of Rs.1773 Crores, the order was set aside by COMPAT and remitted the matter back to CCI to decide the issues afresh. Further, CCI in its second order, imposed a penalty of Rs. 591 Crores at 1 % of the average turnover of the last three years. CIL filed the Appeal before NCLAT, which passed an order stating "*Until further orders the operation of the impugned common order dated 24' March, 2017 passed by Competition Commission of India....shall remain stayed*". This interim order is first of its kind ever since the COMPAT got merged with the NCLAT. *(Competition Appeal (AT) No 01/2017, 31.05.2017)*

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