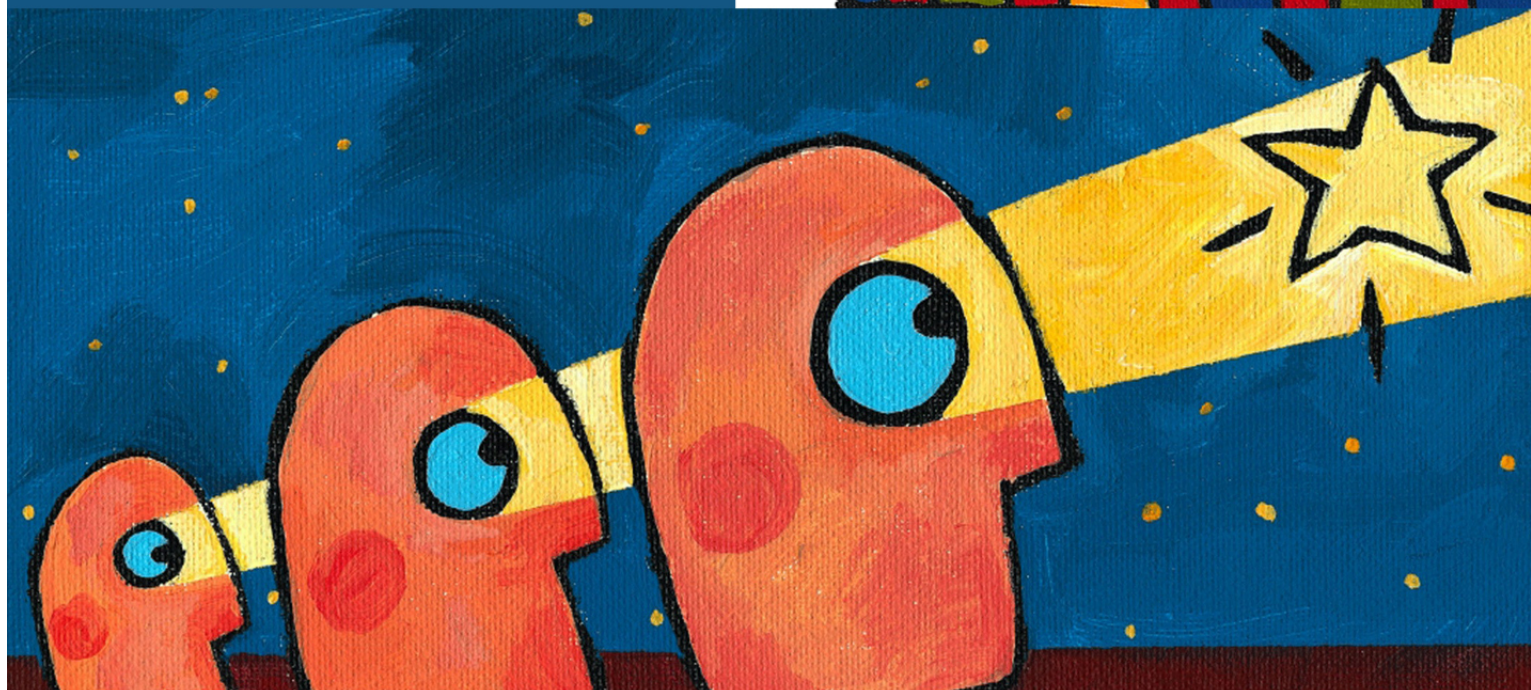


KK SHARMA  
LAW OFFICES

Monthly Newsletter

# State of Antitrust

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Economic Laws | Governance, Regulations and Risk | Public Affairs and Policy

## CCI orders investigation against DDA for abusing its dominant position

The competition regulatory body, by forming a *prima facie* opinion, orders a probe against DDA.

### BETWEEN THE LINES

## Hon'ble Supreme Court restrains CCI from initiating investigation against Uber

The Apex Court orders *status quo* against the Order of the COMPAT and restrains the CCI from initiating investigation against Uber.

## HEARD AT THE BAR

EC imposes a fine of €68 million on three car battery recycling companies for cartelization

Hungarian Competition Authority imposes a fine of 75.68m HUF on four real estate companies for their involvement in anticompetitive agreements

And more....



### **Competition Commission of India orders probe against the Delhi Development Authority**

Through an Order dated 12.01.2017, the Competition Commission of India ('CCI') has formed a *prima facie* opinion against the Delhi Development Authority ('OP'/'Opposite Party'/'DDA') for alleged abuse of its dominant position in the market for development and sale of residential plots in Delhi and directed the Director General ('DG') to cause an investigation into the matter and submit an investigation report within 60 days.

Going by the details given in the Order, the wife of the Informant had applied for a plot under the Rohini Residential Plot Scheme, 1981 (hereinafter the 'Scheme') and deposited Rs. 5000/- as part consideration with the OP in 1981. The allotment of plots was to be done by the OP in a phased manner, spread over a period of 5 years, through draw of lots. The OP did not conduct the draw of lots and no allotment was done for a period of 31 years. Subsequently, due to delay, the Informant purchased a different flat.

Pursuant to an Order of the Delhi High Court, passed in the case of *Krishan Lal v. Delhi Development Authority*, the OP, in 2012, held draws for allotment, and, after a delay of 2 years, the allotment letter with regards to the concerned plot, was issued to Informant's wife. The allotment letter offered two options for payment *i.e.* either in installments or lump sum. The benefit of opting the later of the two options was that the allottee would be entitled to possession of the allotted flat by 31st December, 2014. Informant's wife opted for and paid a lump sum amount and complied with all formalities by 26<sup>th</sup> December, 2014. Despite the completion of all formalities, possession of the plot was not granted to her. In January, 2016, the OP issued a show cause notice against her seeking reasons as to why allotment of the concerned plot should not be cancelled under the Delhi Development Authority (Disposal of Developed NAZUL Land) Rules, 1981 ('Nazul Rules') in view of the fact that the area of the residential flat, in which they resided, was more than 67.00 sq. mts. The Informant claimed that the share of land, in the flat in which he and his wife resided upon, was only about 25 sq. mts., which was less than the threshold of 67 sq. mts. prescribed under the Nazul Rules.

The Informant approached the CCI, alleging abuse of dominant position by the OP through the following conduct:

1. Asking for arbitrary price, which was 116 times higher than the original price offered for the allotted plot;
2. Failure in transfer of possession even after full payment;
3. Unfair clauses regarding penalty imposed against the buyer for delayed payments; additionally, absence of any penalty against the OP for delayed possession;
- and 4. Service of a wrongful show-cause notice against the Informant's wife.

The CCI took note of the wrongful conduct of the OP. Relying upon relevant provisions of the law and precedents, the Commission held that the OP, as a government department, came within the term 'enterprise' under Section 2 (h) of the Act. CCI further opined that the relevant market in the case would be "*the market for provision of services of development and sale of residential plots in the National Capital Territory of Delhi*". While determining the dominant position, the CCI, noted that the OP was the biggest real estate developer in Delhi and that no other developer could match/reach the size and structure of the OP. The CCI, while observing the conduct of the OP, stated that on application, the buyers have to invest their hard earned money under the fear of their applications getting cancelled but they have no choice except to abide by all the conditions put forth by the OP. CCI took the view that the conduct of the OP, *prima facie*, amounts to abuse of dominant position in terms of the provisions of Section 4 of the Act. (Case 78/2016)



## EC imposes a fine of €68 million on three car battery recycling companies for cartelization

On 8<sup>th</sup> February, 2017, the European Commission ('EC') fined three companies a total of €68 million for fixing prices for purchasing scrap automotive batteries. Between 2009 and 2012, four companies, engaged in car battery recycling, were cartelizing to fix the prices of scrap lead-acid batteries in Belgium, France, Germany, and Netherlands. This cartel was different from other cartels, as, instead of increasing the price, the four companies colluded to reduce the purchase price paid to scrap dealers for used car batteries. By colluding amongst each other with the intention to lower the prices, the four companies prevented competition. The communication between the four recycling companies took place mainly through telephone calls, emails, or text messages. As the cartel related to collusion on purchase prices, the EC used the value of purchases to set the quantum of fines. The four recycling companies which were to be fined were Campine, EcoBat Technologies, Johnson Controls and Recylex. Johnson Controls received full immunity for revealing the existence of the cartel to the EC, thereby, avoiding the fine. The fines of EcoBat and Recylex were reduced for their cooperation with the EC's investigation. Campine's leniency application was rejected as it had not disclosed its participation in the infringement. (EC Press release, dated 8<sup>th</sup> February, 2017)

**Hungarian Competition Authority imposes a fine of 75.68m HUF on four real estate companies** On 10<sup>th</sup>, January, 2017, Hungarian Competition Authority ('HCA'), fined four companies namely, Duna House Holding Nyrt. ('DHH'),

Otthon Centrum Holding Kft. ('OCH'), Duna House Franchise Szolgáltató Kft. ('DHF') and Otthon Centrum Franchising Tanácsadó Kft. ('OCF'), for concerting in pricing policies and exchanging confidential business details. During the probe, HCA found that all the four companies had entered into agreements between 2013 and 2014 for sharing their stock, commission fees and fixing the minimum percentage of the Commission payable and the discount to be granted under cross-selling cooperations etc. HCA stated in its order that the contracts concluded between DHF and its members as well as between OCF and its members had obstructed the free determination of prices by the franchisees. HCA while determining fines took into account the relevant turnover as the prorated amount of fees that was collected through the operation of such a franchise system. Further HCA invited the companies for settlement, in order to enable the proceedings to be concluded in an effective manner. All the four companies, in their settlement submissions, voluntarily admitted to the infringement and therefore the HCA reduced the fine imposed by 30%. (HCA Press Release, dated 10<sup>th</sup> January, 2017)

**JFTC fined 6.3449 billion yen and issued 'cease and desist' against Manufacturing Distributors of Equipments for Fire Rescue Digital Radio** On 2<sup>nd</sup> February, 2017, the Japan Fair Trade Commission ('JFTC'), issued a 'cease and desist' order and the surcharge payment order against the manufacturing distributors selling equipments for fire-rescue digital radio. "Equipments for fire rescue digital radio" means the



## Heard at the BAR

*Legal news from India and the world*

equipments which constitute the system for the wireless radio communication used by firefighters. JFTC fined them as they restrained competition in the field by designating successful bidders and enabling them to win the biddings. The total amount of the surcharge to be paid is 6.3449 billion yen. (JFTC press release, dated 02.02.2017)

**Swedish Match fined SEK 38 million for abusing its dominant position** Swedish Patent and Market Court ('PMC') had found that Swedish Match North Europe AB ('SM') abused its dominant position during 2012-2013. SM provided snuff fridges from which both the products of SM and its competitors were sold to distributors. SM implemented a labelling system for these fridges. Failing to follow the labelling system, SM replaced the labels of its competitors with generic labels. PMC found that SM through the labelling system has abused its dominant position and further that the labelling system imposed by SM constituted a marketing ban. The PMC found that there was an anti-competitive strategy behind the labelling system by SM. PMC has now sentenced SM to pay SEK 38 million in fines. (Swedish Competition Authority, Press Release, dated 10.02.2017)

## Supreme Court restrains Competition Commission of India from initiating investigation against Uber on predatory pricing

On 27<sup>th</sup> January, 2017, the Hon'ble Supreme Court, while issuing a notice, ordered *status quo* against the Order of Competition Appellate Tribunal ('Tribunal', 'COMPAT'), dated 07.12.2016 ('Order'), for investigation by the Competition Commission of India ('CCI') against Uber India Systems Pvt Ltd ('Uber') over predatory pricing allegations by Meru Cabs.

Going by the details provided in the Order, there was a good enough reason for Director General (DG) to investigate into the matter as the approach of the CCI in finding Uber's dominant position was not consistent in regard to the market statistical reports which the CCI relied upon. Further, for determining the issue of dominant position, CCI only considered the market share of Uber as a basis. The Tribunal emphasized on the wording of explanation to Section 4 of the Competition Act, 2002 (Act) by stating that "... *dominant position means a 'position of strength'. It does not say that this position of strength necessarily has to come out of market share in statistical terms.*" The Tribunal also discussed that the issue of dominance needs to be determined from a perspective that is not limited to the market share. Further, the Tribunal stated, "*Since the objective of Section 26(1) is to formulate a prima facie view, the information along with material and facts made available should have been enough for the Commission to formulate an opinion.*" The COMPAT had directed the DG to cause an investigation in the matter and submit the report to the CCI within 60 days. (SC Order, dated 27.01.2017)

## Supreme Court orders stay in the Order of Competition Appellate Tribunal against car manufacturers in Automobile Manufacturers' Case

On 3<sup>rd</sup> February, 2017, the Hon'ble Supreme Court issued a notice and ordered an interim stay against the Order of Competition Appellate Tribunal ('COMPAT'), dated 9<sup>th</sup> December, 2016, against Nissan, Ford and Toyota. The COMPAT had modified and upheld the decision of the Competition Commission of India ('CCI') that had found 14 car manufacturers guilty of anti-competitive practices in the automobile spare parts industry and reduced the penalty to 2% on the average annual turnover.

The Tribunal, in its Order, provided a detailed explanation on the evolution of the automobile sector in India and examined the lack of regulatory control in the after-sale services market and spare parts market in the automobile sector in India. The COMPAT also stated that dominant enterprises have a special responsibility of keeping and maintaining a competitive environment in the market; in relation to the case, the COMPAT held, "*OEM accountable for creating and maintaining a competitive environment conducive to the consumer's interest recognising the importance of safety on roads and development of skills and investments in automobile repair sector.*" The COMPAT was of opinion that to deal with such malpractices, the directions given by a regulator should be pragmatic and capable of being implemented, thus, the directions provided by the CCI in its decision were required to be reconsidered and reviewed. Subsequently, the Tribunal modified the directions provided by the CCI and reduced the penalty imposed on car manufacturers. (SC order, dated 03.02.2017)

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