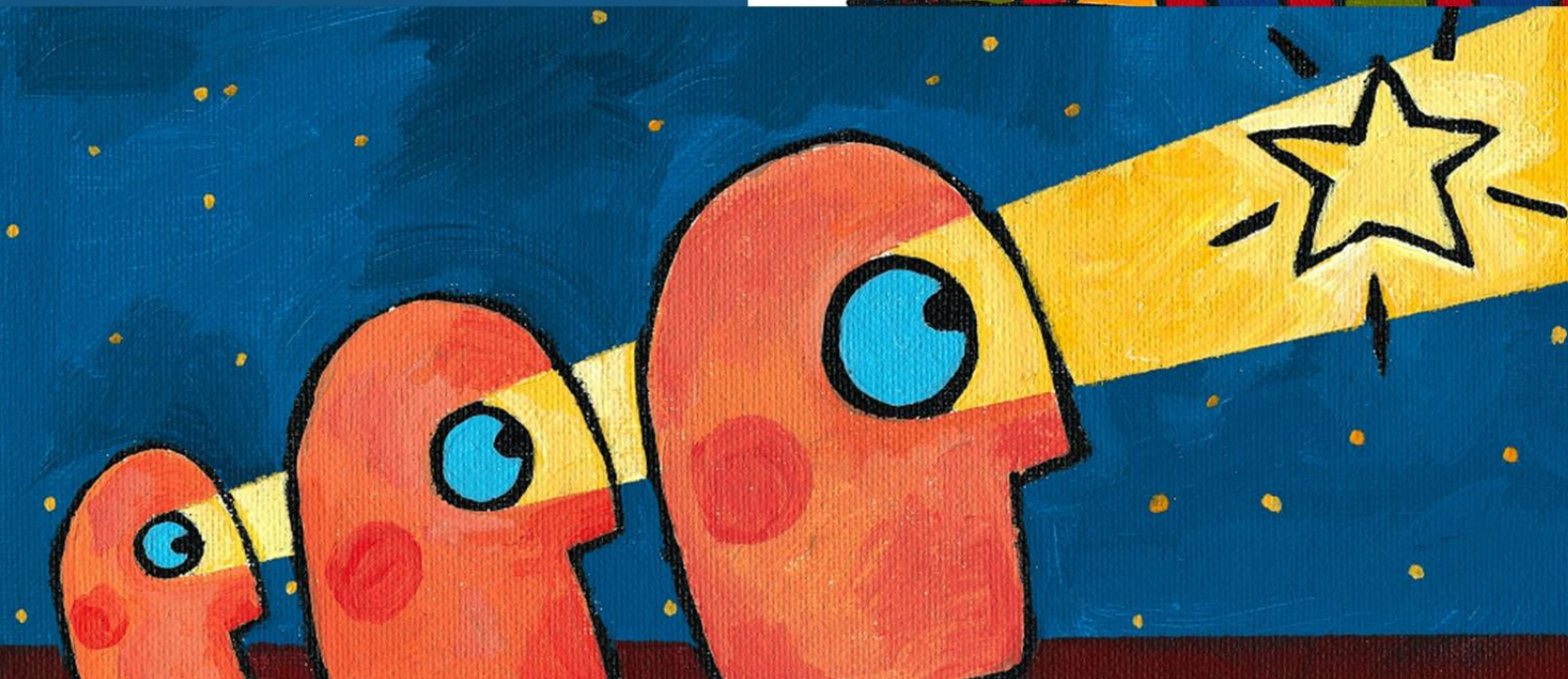




Monthly Newsletter

State of Antitrust

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- **Russian Federal Antimonopoly Services busts 4 different cartels**

And more....

CCI fines bid rigging in procurement of ethanol

Two Information, filed by India Glycols Limited and Ester India Chemicals Ltd. ('Informants'), joined together by the Competition Commission of India ('CCI' or 'Commission') for being similar, inter alia, alleged that a joint tender floated by Indian Oil Corporation Limited, Hindustan Petroleum Corporation Limited and Bharat Petroleum Corporation Limited, together referred to as public sector Oil Marketing Companies (OMCs), for procurement of Ethanol, was in contravention of provisions of the Competition Act, 2002 ('Act') and suffered from bid rigging by the ethanol suppliers and their associations i.e. different sugar mills and their associations viz. Indian Sugar Mills Association (ISMA), Ethanol Manufacturers Association of India (EMAI) and National Federation of Cooperative Sugar Factories Limited (NFCFSF). The joint tender by the OMCs was alleged to be a result of persuasion by the ISMA, EMAI and NFCFSF. In addition, allegation continued, the sugar mills manipulated the joint tender by quoting similar rates or, in some cases, identical rates, through concerted action and common understanding amongst bidders. The Commission, after considering the investigation report, disagreed with the allegation challenging the joint tender as being anti-competitive. On this issue, the CCI, after considering the operational and commercial benefits of issuing a joint tender, held '*...that floating of joint tender by OMCs for procurement of ethanol per se cannot be construed as anti-competitive particularly when such process has evident efficiency benefits...*'.

With respect to allegation of the bid rigging by the sugar mills, the Commission did not agree with the Opposite Parties (OPs) on fixing the similar basic price above the benchmark price having no relation with their own costs, how the quantity offered by sugar mills matching the total quantity needed by OMCs and matching of the freight charges incurred by each sugar mills, despite substantial variations in distance between the distilleries of the bidders and the depots to which ethanol was required to be supplied. In absence of any acceptable explanation and facilitating conduct of the ISMA and EMAI, the Commission held '*.....that the bidders who participated in respect of the depots located in UP/ Gujarat/ Andhra Pradesh in response to the joint tender floated by OMCs have colluded in submitting the bids by quoting collusive prices and sharing quantities using the platform of ISMA and signals provided by EMAI.....*' (**Case Nos. 21, 29, 36, 47, 48 & 49 of 2013**)

Hungarian Competition Agency closes investigation against Google LLC

The Hungarian Competition Authority ('GVH') closed the investigation against Google LLC with Commitment Decision, initiated to inquire the practices of communication, personalization of advertisements and data processing covering Google's 'internet and application' services, 'personalisation of advertisements' and its data processing of 'Allo' chat clients. The investigation was initiated with a concern that the abovementioned practices of Google may affect a rational and undistorted business decision making power of the consumers. With respect to the data processing activity of Google's messenger Allo, the GVH could not find any infringement of the competition law but that did not stop the GVH to ask Google for undertaking future commitments to not resort to any of anti competitive practices. With this closure, the GVH also terminated its proceedings regarding commercial practice related to the data management of new Google features. (**Press Release 31.08.2018**)

Danish Competition Agency holds practice of offering rebate by Teller as abusive

Danish Competition and Consumer Authority ('DCCA') has concluded that the Teller, a payment card service provider, which stood merged with Nets Denmark A/S from December, 2017, has abused its dominant position by offering discounts and rebates to its customers which had the loyalty enhancing effect and resulted in foreclosure of competitor's access to the market. In the period from 2012 to 2016, DCCA found that the Teller offered conditional rebates, capable of foreclosing the competition, in return for exclusive dealings with respect to supply of its customer's demand for international payment card services. As the Teller failed to bring any relevant documents on record, justifying its agreement of granting rebates to its customers, capable of foreclosing the competition, the DCCA ruled that the Teller has abused its dominant position. (**Press Release 29.08.2018**)

Singapore Commission busts a cartel of 13 fresh chicken distributors

The Competition and Consumer Commission of Singapore ('CCCS'), which initiated an investigation into the distribution industry of fresh chickens found that, from September 2007 to August 2014, 13 fresh chicken distributors were actively engaged in discussions on prices of fresh chicken and coordinated with each other to decide the amount and timing of price increase of certain fresh chicken products which were sold in Singapore. Apart from fixing the prices of the fresh chicken products, the 13 distributors also shared markets by agreeing not to compete with each other for customers. The CCCS found that this practice, among the 13 distributors, had a direct bearing on competition which further contributed to the increase in the prices of fresh chicken products in the Singapore. Observing the infringement by the distributors, the CCCS issued an Infringement Decision imposing a financial penalty amounting to \$ 26,948,639 on all 13 distributors. (**Press Release 12.09.2018**)



Heard at the BAR

Legal news from India and the world

Russian Federal Antimonopoly Services busted 4 different cartels: Federal Antimonopoly Services of Russian Federation ('FAS') exposed a cartel, active in pharmaceutical industry of the Russia. The members of the cartels entered into verbal agreements with an objective to maintain prices and ensuring the winner of the e- auctions. The oral agreements were reached between the cartel members through conventional modes such as meetings and telephone conversations. Through this oral arrangement, prices in nearly 29 e-auctions were maintained by the cartel members. The FAS observed signs such as same entities becoming the e-auction winner, repeated actions of the auction competitors, links and legitimate connections among auction participants. These were sufficient enough for the FAS to hold the companies guilty of violation the federal law on protection of competition. (*Press Release 05.09.2018*)

The FAS also found three other cartels in three different cases. The first was in auction for work contract to repair heli-platform, another in auction for supply of medical products, expandable medical materials and disinfectants and the last one was in e-auction for private security services to protect buildings, premises and the adjacent areas. FAS found all three cartels operating with similar schemes such as members of cartels acting in the interests of each other to maintain auction prices, exchange of information, use of the same infrastructure; filing of the auctions bid with identical technical specifications on the same day in small time intervals, minimum contract price reduction by -1%. The member in all three cartels refused to compete with each other. The above mentioned actions followed and practiced by the cartel members violated the provisions of federal law on protection of competition. (*Press Release 31.08.2018*)

German Competition Authority fines DuMont for allocating market: Bundeskartellamt imposed a fine of 16 million Euros on DuMontMediengruppe GmbH & Co. KG ('DuMont'), an individual and a lawyer. The proceedings were initiated after a leniency application was received from the Bonner General-

Anzeiger group ('BGA'). During the proceedings, it was found that DuMont and BGA entered into territorial agreements to divide the distribution and circulation of newspapers.

Two territorial agreements were entered in the year 2000 and 2005 respectively. As per agreement, one of the publishers had to withdraw its distribution, so as to avoid competition among themselves. The result of the agreement was elimination of competition in the areas agreed to between the DuMont and the BGA. The agreements which aimed at phasing out competition are prohibited under the German Competition Act. (*Press Release 04.09.2018*)

South Africa Competition Commission uncovers 2 cartels and commences investigation into a third one : A consent agreement has been reached between the South Africa Competition Commission ('SACC') and Fire Protection Systems (PTY) Ltd ('FPS') after the FPS admitted that it has contravened the provisions of competition law by resorting to practices such as price fixing, market division and collusive tendering in the market for the supply, installation and maintenance of fire control and protection systems. The SACC opened investigation on 13.03.2015 against 8 companies i.e. Afrion Property Services CC, Belfa Fire (pty) Ltd, Cross Fire Management (Pty) Ltd, the FPS, Fireco (Pty) Ltd, Fire control System (Pty) Ltd, QD Air (Pty) Ltd and Technological Fire Innovations (Pty) Ltd. Later, on 26.06.2015, the SACC included 4 more companies viz. Fireci Gauteng, QD Fire (Pty) Ltd and Keren Kula Mechanical (Pty) Ltd in the complaint. The FPS and other companies entered into bilateral and multilateral agreement and provided each other with cover price by sharing bill of quantities through various modes such as fax, emails, calls and meetings. The Competition Tribunal by its order confirmed the consent agreement wherein the FPS has agreed to pay R 500,000 as an administrative penalty. (*Press release 13.09.2018*)

Fertilizer Cartel: Omnia Fertilizer Limited ('Omnia') a diversified chemical group engaged in production of fertilizers, was charged with violation of

Competition Act and has agreed to enter into a settlement agreement while accepting to pay R30M. As per the settlement agreement, the Omnia admitted that one of its divisions namely the Nitrochem division ('Nitrochem') fixed prices and allocated fertilizers markets. The complaint dates back to the year 2003 when Nutri-Flo CC and Nutri-Fertilizers alleged that Sasol Chemical Industries Limited ('Sasol') was engaged in anticompetitive conduct with further allegation of collusive conduct by the Omnia and the Nitrochem. During the investigation, it was discovered that there were arrangements between the Sasol and the Omnia to fix price of limestone ammonia nitrate. These collusive arrangements were coordinated through various meeting. The Sasol was penalised in year 2009 as an administrative penalty and now with the Omnia's settlement with the Commission, the cartel conduct has come to an end (*Press Release 07.09.2018*)

Book Publishers Cartel: An investigation has been ordered by the SACC after it received information indicating that there are possibilities that the Publishers Association of South Africa and its members, who are publishers, book importers and book sellers, might be engaged in practice of price fixing of books which is in violation of Competition Act. It appears to the SACC that the cartel has been in existence since 1980s and is expecting the members of the cartel to come forward and assist and cooperate with the investigation. (*Press Release 29.08.2018*)

Hong Kong Competition Authority takes renovation cartel case to Competition Tribunal

Three companies i.e. Goldfield N&W Construction Company Limited, Kam Kwong Engineering Company Limited and Pacific View Engineering Limited, collectively referred to as the 'Companies', are being prosecuted by the Hong Kong Competition Commission ('HKCC') for allegedly engaging in cartel activities such as allocation of customers and coordination of prices with respect to renovation services at King Tai Court, San Po Kong. The Companies engaged in cartel conduct from June 2017 to November 2017. The HKCC also initiated proceedings against Mr. Chan Kam Shui and Mr. Lam Po Wong, collectively referred to as the 'Individuals', alleging that their participation in the cartel conduct has infringed the First Conduct Rule of the Competition Ordinance. The HKCC is seeking declaration from the Companies and the Individuals to the effect that- they contravened the First Conduct Rule; Mr. Chan Kam Shui and Mr. Lam Po Wong were actively involved in contravention, director disqualification order against Mr. Chan Kam Shui; payment of pecuniary penalties by the Companies and the Individuals; and a restraining order from Competition Tribunal against the Companies and individuals. *(Press Release 6.09.2018)*

Hellenic Competition Commission finds Minerva indulging in anticompetitive conduct

The ex-officio investigation by the Directorate General of Competition against Minerva Sa Edible Oils Enterprises ('Minerva') ended up with the Hellenic Competition Commission ('HCC') imposing a fine of Euro 384,106.65. The HCC found that the Minerva participated with its wholesaler in a prohibited manner, and that the Minerva engaged in a practice of resale price maintenance in margarine and butter production and marketing sector. The HCC during the investigation found the distribution agreements entered between Minerva and its wholesalers/distributors to be incompatible with the competition law and therefore imposed a fine. The HCC further threatened to impose additional penalty of 10,000/- Euros on the Minerva for each day, if the Minerva delayed in complying with the decision from the day of its publication. *(Press Release 03.09.2018)*

CCI expands the scope of Investigation against Super- Specialty Hospitals in and around Delhi

In connection with information registered as case no. 77 of 2015, the Competition Commission of India ('CCI' or 'Commission') had directed the Director General ('DG') to inquire, whether or not the super-specialty hospitals ('SSH') in and around Delhi are indulging in anticompetitive practices. Following the aforesaid direction, the DG conducted its investigation and submitted the report. Considering the report the CCI opined that there is a need to widen the scope of investigation after noting that huge profit margins are being earned by the sale of products to the locked-in in-patients to the detriment of such patients. Now, the investigation will also cover the practices of the SSH in respect of the healthcare products and services provided to their in-patients. Focus will be on the products sold by the SSH to their in-patients which are not required on an urgent basis for any medical procedure/intervention or which do not involve any high degree of quality issue from the medical procedure point of view and for the purchase of which the patients have the time to exercise their rational choice to purchase it from open market, which are available at lower rate. The aim of the CCI is to prevent practices having adverse effect prevailing in healthcare sector. *(Press Release 05.09.2018)*

KK Sharma Law Offices

An initiative of Kaushal Kumar Sharma, ex-IRS, former Director General & Head of Merger Control and Anti Trust Divisions, Competition Commission of India, former Commissioner of Income Tax



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