



Monthly Newsletter

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AND MORE...

Asphalt producers fined approx 1.4 million Euros for setting up supplier consortia

The Federal Cartel Office of Germany ('Bundeskartellamt'), on 10th December 2018, imposed a fine amounting to 1.43 million Euros on Gaul GmbH, a manufacturer of asphalt mixes, for participating in a cartel agreement. The cartel agreement was disclosed by Südhessische Asphalt-Mischwerke GmbH & Co. KG ("SHM") in a leniency application. Though SHM was also involved in the cartel agreement but was not penalised as it provided vital disclosure regarding the cartel.

The agreement between the cartel members to form a supplier consortia, dates back to late 1990s and since then the members were agreeing on prices, sales area, customers, quotas and orders for the supply of asphalt mixes (also known as bitumen). Since 2005, the period under review, there has been more than 100 bilateral and trilateral agreements between the supplier consortia.

The asphalt mixes are primarily used for the construction of road. As the direct buyers of asphalt mixes were road construction companies, therefore, the arrangements between the cartel members were detrimental to the road construction companies and ultimately the state, which usually commissions the road construction work.

The Bundeskartellamt, in its investigation, also went after the small manufacturers of asphalt mixes as it had initial suspicion that the small manufactures had also participated in the cartel agreement but later terminated the legal proceedings as nothing substantial could be found against them. Apart from this, legal proceedings were also initiated against MitteldeutscheHarstein-Industrie AG and its former subsidiary, which were later dropped by the Bundeskartellamt due to legislative loophole and discretionary reasons. (*Press Release 10.12.2018, Revised edition on 14.12.2018*)

FAS busted a cartel that used auction robot to rig auctions in Russia

Last year, on 3rd November 2017, the Federal Antimonopoly Service of the Russian Federation ('FAS') opened a case on seeing the signs of digital collusion at medical auctions. The FAS suspected that bidders i.e. "VALERIA" Ltd. and "Egamed" Ltd, used special software, to rig the bids for procurement of supplies of expendables for coronary angiography and stenting. According to the FAS, the bidders programmed their softwares in such a way that it allowed automatic maintenance of the maximum price at the auctions. (*Press release 03.11.2017*)

On 20th December 2018, FAS confirmed imposition of fine on "Egamed" as it voluntarily admitted to have taken part in the cartel, formed to rig the auctions for the supply of expendable medical materials. The admission was done by taking advantage of the administrative leniency program. (*Press release 20.12.2018*)

With respect to the Digital Cartels, Mr. Andrey Tenishev, the head of FAS Anti-Cartel Department, spoke about the FAS's practice of using various softwares to detect digital cartels. Mr. Tenishev also reiterated two bid-rigging cartel cases, investigated by the FAS. In the first case, the FAS found that a Russian subsidiary of "Apple" manually coordinated and achieved common prices for company product and in the second case - against LG, prices for dozens of Smartphone models were coordinated with the help of digital tools, which maintained prices at the same level. Mr. Tenishev, further added that in the course of investigations in those cases, the FAS found use of auction robots, instead of human beings, which allowed the cartel members to participate more efficiently in tenders as the cartel members programmed their robot in such a way that it allowed successful implementation of their cartel agreements. Mr. Tenishev, emphasized, the need to counter new challenges arising out of modern technologies and the improvement required in the ability of the FAS to expose and prove a cartel. (*Press Release 12.12.2018*)

DOJ (US) impleads Nextar into ongoing investigation in the broadcast television industry.

A complaint was filed by the Department of Justice ('DOJ') in the case of *United States v. Sinclair Broadcast Group, Inc* on 13th November, 2018. Consequently, the DOJ initiated an investigation into the practice of exchange of competitively sensitive information between television broadcasting companies in the broadcast television industry. Almost a month later, on 13 December 2018, the DOJ filed an amended complaint for impleadment of Nexstar Media Group Inc. ('Nextar') as defendant. The Nextar is one of the largest owners of television stations in U.S.A. According to the amended complaint, Nexstar agreed with other entities in many metropolitan areas across the United States to exchange revenue pacing information, and also engaged in the exchange of other forms of non-public sales information in certain metropolitan areas. By exchanging pacing information, Nexstar and other broadcasters were able to anticipate whether their competitors were likely to raise, maintain, or lower spot advertising prices, which in return helped and informed their stations to formulate pricing strategies and negotiate a better deal with advertisers. This act of exchanging information was harming the competitive price-setting process.

This practice of sharing pacing information directly and indirectly harmed the American business as they were not getting competitive advertising rates and ultimately harming the consumers who are user of the services of these businesses.

Along with the amended complaint, a settlement agreement was also proposed. The proposed settlement prohibits direct or indirect sharing of such competitively sensitive information by Nextar. The proposed settlement further requires Nexstar to cooperate in the Department's ongoing investigation and to adopt rigorous antitrust compliance and reporting measures to prevent similar anticompetitive conduct in future. The settlement has a seven year term, and it will continue to apply to stations currently owned by Nexstar, even if those stations are acquired by another company. (*Press Release 13.12.2018*)



Heard at the BAR

Legal news from India and the world

by Roberto Dip and Jason Hadal by agreeing with the competitors to fix the prices for freight forwarding services in the United States and elsewhere from at least as early as September 2010 until at least March 2015. Apart from pleading guilty, both the executives agreed to cooperate and to pay the criminal fine. (*Press Release 30.11.2018*)

ACCC has announced Consumer Data Right with Rules

Following the announcement made by the Australian Government in May 2018, the Australian Competition & Consumer Commission ('ACCC') has released the Rules Outline for the new Consumer Data Right (CDR) and made it available to the public from 21st December 2018.

The Commissioner of ACCC, Sarah Court said, the CDR will initially apply to banking data. The ACCC expects '*the CDR to open up a range of innovation and cheaper financial services to consumers because it will overcome some of the problems caused by the lack of transparency around current market offers and the concentration of consumer banking data in the hands of the banks. The rules outline will offer certainty to data holders and potential data recipients so they can continue to develop the reliable and secure systems and new product offerings ahead of the start of the CDR regime*'.

Now, with the introduction of the CDR, there will be an obligation on the user of consumer's banking data to comply with the data sharing obligation, as set out by the Data Standards Body. (*Press Release 21.12.2018*)

pending against Computicket. (*Press Release 20.12.2018*)

A civil penalty of \$609,810 imposed on James Dolan for violating Antitrust Premerger Notification Requirements

A civil penalty of \$ 609,810 has been imposed on Mr. James Dolan for failing to notify the acquisition of voting securities of Madison Square Garden Company ("MSG") to Federal Trade Commission ('FTC') and Department of Justice ('DOJ') as required under Hart-Scott-Rodino Act of 1976, ('HSR').

Mr. Dolan is an American businessman, investor and occupies position as an Executive Chairman and Director in the MSG.

The DOJ in its complaint alleged that Mr. Dolan acquired voting securities of MSG in excess of then applicable statutory threshold (\$161.5 million at the time of acquisition) without making the required pre-acquisition filings under HSR with the FTC and without observing the waiting period. Hence violated the premerger notification and waiting period requirements of HSR.

The complaint by the DOJ was filed along with the proposed settlement. As per the settlement agreement, Mr. Dolan has consented for the settlement and agreed to pay \$609,810 as civil penalty to resolve the lawsuit. (*Press Release 06.12.2018*)

DOJ convicts two freight forwarding executives for fixing price in the international freight forwarding industry

Two Executives namely Roberto Dip, the president and CEO and Jason Hadal, the manager, of a Louisiana-based freight forwarding company, pleaded guilty as they orchestrated a nationwide conspiracy to fix prices for international freight forwarding services. The guilty pleas by the two executives marked the first convictions in the ongoing investigation, which is being conducted by the Antitrust Division and FBI's International Corruption Unit and New Orleans Division into price fixing in the international freight forwarding industry. The conspiracy was executed

Two ticket distributors prosecuted for anticompetitive behaviour by the SACC

The Competition Commission of South Africa ('SACC') has referred ticket distributing company i.e. Shoprite Checkers (Pty) Ltd ('Shoprite') to the Competition Tribunal ('Tribunal') for signing and enforcing exclusive agreements with inventory providers in entertainment industry as the same were in contravention of the Competition Act, No 89 of 1998 ('Act').

The complaint was first filed during the year 2008 & 2009 against Computicket (Pty) Ltd (Computicket) by five companies namely Strictly Tickets, Artslink, Going Places, TicketSpace and Ezimidlalo Technologies (the complainants) alleging that Computicket engaged in anti-competitive practices by concluding exclusive agreements with inventory providers. The exclusive agreements were for the provision of outsourcing ticket distribution services covering events such as sports, cinemas, theatres, festivals and live events.

As per the agreements between the Computicket and inventory provider, the Computicket was appointed as the sole ticketing services provider to the inventory provider. Further the terms of the agreements allowed Computicket to discriminate, by charging discriminatory prices from its large and small inventory providers.

While the matter was before the Tribunal for adjudication, another complaint was filed by the Twangoo (Pty) Ltd which is trading as Groupon South Africa ("Groupon") on 18 June 2013 before the SACC alleging that Computicket concluded exclusive agreements with inventory providers in the entertainment industry.

Due to some reasons, the Groupon withdrew its complaint but the SACC took the cognizance of the alleged prohibited practice by invoking section 49B (1), which empowers SACC to initiate a complaint against an alleged prohibited practice.

On 3rd October 2018, the SACC amended the complaint to include Shoprite Checkers as the second respondent, because the allegations against the Shoprite are similar to the case already

CMA of UK exposes cartel between two construction firms

A cartel which started in 2006 and continued for almost 7 years has been busted by the Competition and Market Authority, UK ('CMA') after it provisionally found that the two companies viz. Stanton Bonna Concrete Ltd ('SBC') and CPM Group Ltd, ('CPM') regularly held secret meetings to set up and operate an illegal cartel with an aim to fix or share markets and collude on prices for construction products. Both the Companies i.e. the SBC and CPM are manufacturers of pre-cast concrete products and held more than 50% of the market before 2010 and over 90% of the market from 2010 onwards.

The product i.e. pre-cast concrete drainage is primarily used in large infrastructure projects such as water management, roads and railways across Great Britain. The typical customers of their products included engineering and construction companies, utilities providers; and local and national governments. Both the companies have agreed to settle and take part in the settlement process after admitting that they participated in the alleged cartel. The fine which is to be imposed will be determined once the overall investigation is concluded.

The CMA is also looking into another company i.e. FP McCann Ltd, which is also under investigation. At present, the FP McCann Ltd has not made any admissions. Therefore, no assumption with respect to them breaking the law can be made. (*Press Release 13.12.2018*)

FAS holds intra-roaming anticompetitive, fines three cellular operator with over 2 million RUB

Federal Antimonopoly Service of the Russian Federation ('FAS') has fined three companies viz. Vypelcom, MTS and Megafon, collectively referred to as 'Cellular Operators', a sum of 2 million RUB approximately, for charging economically and technologically unjustified intra network roaming charges.

Before opening the case against the Cellular Operators in March 2018, FAS sent warnings to them to discontinue charging unjustified tariffs with respect to domestic roaming from the subscribers who would travel outside the "home" region. As, the Cellular Operators did not stop charging unreasonable amount for domestic roaming from the subscribers, the FAS opened administrative investigation against them.

In FAS's opinion, the cost of communication services and the daily fee charged from the subscribers by the Cellular Operators travelling across Russia outside their home region were unreasonably overrated. FAS did not issue mandatory injunctions to Cellular Operators as they voluntarily eliminated the unfair conduct during the course of the investigation. Following this case, the Russian President Vladimir Putin on 28th December 2018, signed a federal law amending Articles 46 and 54 "On Communications" which now prohibits intranet roaming within Russia. (*Press Release 20.12.2011*)

CMA, UK tackles anti-consumer business practices in banking industry

The practice of discriminating the existing and the new customers on the basis of price, for the same services or products, has been investigated by the Competition and Market Authority ('CMA') of United Kingdom. The investigation by the CMA has uncovered unfair and discriminatory practices employed by the firms operating in 5 different markets i.e. cash savings, mortgages, household insurance, mobile phone contracts and broadband.

The practice of continuously and stealthily increasing the price, costly exit, time consuming and difficult processes involved to cancel a contracts or switch to a new service provider and further requiring customers to auto-renew or not giving sufficient warnings with regard to the rollover of their contract has led to imposition of a unfair penalty on the customers totaling to around £ 4 billion a year in these markets. In response to the investigation and subsequent findings, the CMA has made recommendations to regulators and the government to help stop these firms, by bringing reforms, from charging loyalty penalty on the customers. (*Press Release 19.12.2018*)

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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