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

- MCA paves way for CCI to issue guidelines on the provisions of Competition Act
- ACCC published report highlighting expansion of digital platform service providers
- CCI closes the case against Survey of India

HEARD AT THE BAR

- Bundeskartellamt initiates abuse of dominance proceedings against Coca-Cola
- EC issues Statement of Objections in Amazon-iRobot Acquisition case

- EC imposes €26.6 million fine on Rabobank over Euro-denominated bonds trading cartel

BETWEEN THE LINES

- CCI approves acquisition of CaratLane's shares by Titan
- Competition Tribunal – South Africa prohibits merger between Akzo Nobel and Kansai Paints
- The term of Committee on Digital Competition Law ('CDCL') extended upto December 31, 2023

MCA paves way for CCI to issue guidelines on the provisions of Competition Act

With the amendments of 2023, amongst others, two new Sections viz. 64A and 64B were inserted in the Competition Act, 2002. By introduction of 64A, the Act brought into existence a structure in the process of issuing regulations. Indeed, a number of regulations were already in force before this sub-section was inserted into the Act, but it gives a procedure which should be followed by the Commission while making regulations. The second Section inserted in the same amendment was enabling the Commission to publish guidelines on the provisions of the Act and the Rules and Regulations made thereunder, either on a request made by a person or its own motion. It is common in the competition law world, as is seen in USA and EU, that for issues which affect stakeholders at large - to bring transparency as well as certainty - the competition agencies try to bring out their thoughts of working in various directions – be it how they would be analysing the mergers, or how they would be imposing the penalties. This is a double edged – sword. While this does help act as a guiding star to the stakeholders while submitting either merger filings or defending clients against potential penalties, but, it also helps them in anticipating actions by the agency. As a step forward, the Ministry of Corporate Affairs had brought out a Notification bearing no. 05/4/2023-Comp-MCA dated 26.10.2023 in which the rules for Competition (Form of Publication of Guidelines) Rules, 2023, have been prescribed. This gives a format in which the Commission can issue guidelines on various subjects and, thereby, bringing certainty and transparency into its functioning and also letting the nascent competition law stabilise in the country. It remains to be seen as to how this affect the litigation going forward. Though all these guidelines begin with a disclaimer that these cannot be used as views of the Commission but the parties in any dispute are sure to make such claims. Therefore, only time would tell if these guidelines serve the intended purpose or become a source of further confusion in litigation.

[\(Published in Official Gazette on 26.10.2023\)](#)

ACCC published report highlighting expansion of digital platform service providers

The Australian Competition & Consumer Commission ('ACCC') has published its 7th interim report in the Digital Platform Services Inquiry. The Digital Platform Services Inquiry was initiated by ACCC, under the direction of Australian Government, to analyse “markets for the supply of digital platform services”. In its 7th Report titled as ‘Report on expanding ecosystems of digital platform service providers’, the ACCC’s analysis focusses on the expansion of Digital Platform Service Providers ('DPSP'), especially, the following companies – Alphabet (Google), Amazon, Apple, Meta and Microsoft. The report highlights that these DPSPs have extended their reach beyond their original offerings and have diversified into various other segments. In this particular report, ACCC has specifically analysed Smart Home Devices and Consumer Cloud Storage Services, as examples of expansion of DPSPs into digital ecosystems. It was noted that, even though, this diversification of service line-up in markets that are adjacent or complementary to the DPSPs’ core markets can provide benefits to consumers, however, it was also highlighted that this expansion could be driven with the purpose to protect the DPSPs market power and position. The ACCC is of the opinion that this expansion of DPSPs into digital ecosystem, raises potential consumer harm in 2 specific areas, *firstly*, the personal data collection practices of digital platforms across their ecosystems of products & services; and *secondly*, the impacts of consumer lock-in practices induced through the expansion of core services into an insulated digital ecosystem. As a response and to advance the optimum level of benefits to consumers, ACCC has proposed introduction of a new regulatory regime alongside its existing competition laws, which, inter alia, includes new service-specific mandatory codes of conduct for particular ‘designated digital platforms,’ based on principles as set out in the Competition and Consumer Act, 2010.

[\(Press release dated 27.11.2023\)](#)

CCI closes the case against Survey of India

An information against the Survey of India ('SoI') for anti-competitive practices, by way of custom made specifications suiting a cartel of bidders, in procurement of 4 LED Plotters with Folders in tender no. GEM/2022/B/2897455 dated 01.03.2023 was closed under section 26(2) of the Act. The Information alleged that the outcome was awarding the tender on an exorbitant price. The Commission, not finding merit in the case, closed the matter.

[\(Order dated 30.11.2023 in Case No. 24 of 2023\)](#)



Bundeskartellamt initiates abuse of dominance proceedings against Coca-Cola

The German Competition Authority (**'Bundeskartellamt'**) has initiated an investigation against Coca-Cola Europacific Partners Deutschland GmbH (**'Coca-Cola'**) for an alleged abuse of dominance by using a rebate policy, having an exclusionary effect in the market.

Coca-Cola is engaged in bottling & distribution of all the beverage brands, included in the portfolio of the parent – Coca-Cola Company, in Germany. The Bundeskartellamt's investigation is primarily concerned with the rebate structure of Coca-Cola, having the effect of creating incentives for the food retailers in Germany to buy, display & advertise the full range of beverages offered by Coca-Cola (e.g. Fanta, Sprite, Mezzo Mix, ViO, Fuzetea, Powerade) in addition to the Cola flavoured beverages. There are apprehensions that the conditions imposed by Coca-Cola on food retailers in Germany are restrictive towards other beverage producers competing with Coca-Cola not only in Germany, but also in the neighbouring markets of other EU member nations.

[\(Press Release dated 14.11.2023\)](#)

EC issues Statement of Objections in Amazon-iRobot Acquisition case

The European Commission (**'EC'**) has issued 'Statement of Objections' to Amazon.com Inc. (**'Amazon'**) and iRobot highlighting its concerns over the Amazon's acquisition of iRobot. The EC is of the opinion that the proposed acquisition could lead to restriction of competition, by hampering effective competition from other rival Robot Vacuum Cleaners (**'RVCs'**) suppliers in the market for RVCs in the European Union (**'E.U.'**), especially in the member states of France, Germany, Italy, and Spain, wherein Amazon holds the position of an important sales channel for RVCs. The Acquirer – Amazon, a US-based multinational company, operates as an online marketplace in which retailers

and sellers can advertise and sell their products (including the product under scrutiny in this assessment – RVC) to consumers. In addition to that, Amazon also offers voice assistant – Alexa which enables smart device operations through voice enabled assistance. The Target entity – iRobot, is also a US-based company which manufacturer RVCs and sells it through various channels including on Amazon's online marketplace.

After conducting an in-depth investigation, the EC has come to the conclusion that there is a likelihood that post acquisition, Amazon might impede competition in the RVCs market since Amazon has, both, the ability as well as incentive to foreclose iRobot's rivals by delisting them from its website, reducing visibility of rival RVC brands, or by directly or indirectly raising the cost of iRobot's rivals to advertise and sell their products on Amazon's platform. Further, the EC is also of the opinion that, as Amazon is likely to gain more from the additional sale of iRobot's RVCs than it would lose from fewer sale of rival's products on Amazon, it might even be economically profitable for Amazon to foreclose iRobot's rivals.

[\(Press Release dated 27.11.2023\)](#)

EC imposes €26.6 million fine on Rabobank over Euro-denominated bonds trading cartel

The EC, after an in-depth investigation, has found Rabobank and Deutsche Bank (**'DB'**) to be involved in a cartel in the market of trading of Euro-denominated SSA bonds (**'EDB'**) and Government Guaranteed bonds (**'GGB'**) in the European Economic Area (**'EEA'**) between 2006-2016. Finding their involvement, the EC imposed €26.6 million fine on Rabobank, whereas, DB was not fined under the EC's leniency program, as it had revealed information relating to the cartel to EC. Bonds are debt securities paying a defined rate of interest, which enable entities to raise funding in international financial markets, and which are subsequently held as



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India and the world*

investments or traded like any other financial instrument. Bonds are first put to sale via auctions and syndicates, also known as sale in the "primary market". Thereafter, these bonds are traded between banks, brokers and investors in the "secondary market". EC noted that the present case relates to trading of bonds in the secondary market.

EC's investigation revealed that, during the period 2006-2016, the traders operating at DB's EUR SSA desk in Frankfurt and Rabobank's Investment Grade Bonds desk in London, were involved in exchange of commercially sensitive information, which allowed these traders to coordinate price levels and trading strategies amongst themselves. The EC found that the exchange of commercially sensitive information between traders of Rabobank and DB was convened through Bloomberg emails, instant messages and online chatrooms. It was established through these documentary evidences that the traders at Rabobank and DB communicated with each other information relating to prices, volumes and current and future trading strategies and positions, allowing them to coordinate the prices to be offered and displayed on dealer-to-client electronic trading platform – Bloomberg AIQ.

[\(Press release dated 19.10.23\)](#)

CCI approves acquisition of CaratLane's shares by Titan

The CCI has given its approval to the proposed acquisition of 27.18% share capital of CaratLane Trading Private Ltd. (**'CaratLane'**) by Titan Company Ltd. (**'Titan'**). In this proposed transaction, Titan will acquire the shares, constituting 27.18% of the shareholding, from 3 individuals.

The acquirer – Titan, is a public listed company, which owns lifestyle brands including, Jewellery, Eye care, Fragrances, Fashion Accessories, and Indian Dress Wear. Whereas, the target – CaratLane, already a subsidiary of Titan, is a private limited company engaged in the business of manufacture and sale of Gems and Jewellery in India.

Since, Titan is already the holding company of CaratLane having 72.25% of shares (as per CaratLane's 2022 Annual Report), the proposed acquisition is not likely to affect competition in India.

[\(Press release dated 21.11.2023\)](#)

Competition Tribunal – South Africa prohibits merger between Akzo Nobel and Kansai Paints

The Competition Tribunal of South Africa (**'Competition Tribunal'**) has issued an order prohibiting the proposed acquisition of Kansai Paint Co. Ltd. (**'Kansai Paints'**), manufacturing and selling decorative and industrial paints as well as colorants used for factory-produced base paint utilizing paint tinting equipment, by Akzo Nobel N.V. (**'Akzo Nobel'**), a Dutch multinational group manufacturing and selling decorative and industrial paints. The approval for acquisition was previously declined by the Competition Commission – South Africa (**'CCSA'**), since, the CCSA was of the opinion that the proposed acquisition is likely to result in *"a substantial prevention or lessening of competition"* in the *"market for the manufacture and supply of decorative coatings."*

[\(Press release dated 21.11.2023\)](#)


The term of Committee on Digital Competition Law ('CDCL') extended upto December 31, 2023

Subsequent to the report of Parliament Standing Committee in finance, recommending a Digital Competition Act, the MCA had set up the CDCL for examining the need for an ex-ante regulatory mechanism for digital firms. Any vigilant reader would note that almost every day instances of antitrust violations by the big tech companies, as they are known as competition law parlance, such as Alphabet, Google, Facebook, Amazon or Microsoft keep on popping up almost from every nook and corner of the world wherever there is regulatory mechanism for enforcement of competition law. Not merely competition law violations but even on issues of privacy many of these giants have been hauled up for breach in different parts of the world. Having access to the control of these huge digital platforms gives immense power in the hands of these companies. History has shown that this power is likely to be abused. India, with its boom in market, partly supported by the growing population and a huge work force in the productive range cannot remain unaffected.

It was in this background that CDCL panel was expected to submit its report to the Government including a draft Digital Competition Act ('DCA'). Whether the DCA would have a separate existence outside the purview of the Competition Act, 2002 or would, in some way, be connected with the parent act on competition law only remains to be seen. It will also substantially depend on the interplay between the Ministry of Electronics and Information Technology and Ministry of Corporate Affairs as well as the Competition Commission of India. It is not without significance that the CCI has also set up a Digital Market Units ('DMU') within the CCI to look into the antitrust practices by technology firms. Whether this unit would get the responsibility of enforcement or it would remain with the Ministry of Electronics and Information Technology remains to be seen. Nonetheless, be that as it may, now we expect the report of CDCL finally on December 31, 2023. It is likely to show us a new way while dealing with the digital platforms.

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