



State of Antitrust

January 2020; Volume 7 Issue 1



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

- Odisha State Civil Supplies Corporation Ltd faces probe for alleged abuse of dominant position

HEARD AT THE BAR

- European Commission initiates investigation into the acquisition of Daewoo Shipbuilding and Marine Engineering
- Competition Authority of Israel imposes a fine of NIS 39 Million (11 Million USD) on distributor of Coca Cola

- French Competition Agency ('AdC') ,in partnership with its Dutch counterpart, busted a French cartel

BETWEEN THE LINES

- French Competition Agency('AdC') imposed €150M fine on Google for abusing its dominant position in Google Ads advertising platform

AND MORE...

Odisha State Civil Supplies Corporation Ltd faces probe for alleged abuse of dominant position

The Competition Commission of India ('CCI'/'Commission') has directed an investigation against State of Odisha ('OP-1') and Odisha State Civil Supplies Corporation Ltd. ('OP-2') (collectively 'OPs') on being informed by M/s. Maa Metakani Rice Industries ('Informant') that how OP-2 is abusing its dominant position by threatening and dictating the millers, including the Informant, either to enter into the agreement for custom milling of paddy for the Kharif Marketing Season ('KMS') 2018-19 or face non-payment of their custodial and maintenance charges arising from earlier KMS agreement entered with OP-2.

As per the information, the Informant is in the business of rice (paddy) milling, production of rice, broken rice, bran, etc. The Informant had entered into an agreement on 23.11.2015 with OP-2 for custom milling of paddy for the KMS 2015-16 ('Custom Milling Agreement'/'CMA'). The said agreement provided for Standard Fire Insurance coverage ('Insurance Policy') of the stock of OP-2, kept and maintained by the Informant. As per the Insurance Policy, OP-2 was responsible, on behalf of the custom millers, including the Informant, to take the Insurance Policy for its stock lying within the premises of the custom millers, including the Informant. It was stated that on 04.08.2016, OP-2's stocks lying at the Informant's premises were damaged due to flood, despite of the necessary steps undertaken by the Informant to protect the stock of OP-2.

To understand the procedures required for claiming the damages under the Insurance Policy, the Informant wrote letters to the OP-2 and learned that OP-2 had unilaterally changed the clauses relating to insurance in the CMA. Additionally, OP-2 withheld the custom milling dues of the Informant, which became payable to the Informant after completion of KMS 2015-16 stating that the dues could not be released as the Insurance claims of OP-2 had not been settled by the New India Assurance Company Ltd ('Insurance Company').

Aggrieved by the same, the Informant approached State Consumer Disputes Redressal Commission, Cuttack ('SCDRC') and filed a consumer complaint. Pursuant to which, OP-2 released a partial amount which was pending with OP-2. Sometime later, the SCDRC directed OP-2 to release the pending amount, which was not disputed by OP-2. During the pendency of complaint before SCDRC, the Insurance Company rejected the claim of OP-2 arising from the Insurance Policy and OP-2, without stating any grounds, debarred Informant from participation in Rabi Paddy procurement for KMS 2017-18.

It was also stated in the Information that All Odisha Rice Millers Association ('AORMA') wrote a letter dated 06.11.2018 to OP-2, highlighting the issues relating to non-payment of arrears to the millers. Consequently, due to non-payment of arrears, the millers in the state of Odisha refused to enter into any agreement for KMS 2018-19 with OP-2. In response, OP-2 issued a letter dated 22.11.2018, threatening the millers that differential custody and maintenance charges arising out of agreement for custom milling of paddy for KMS 2017-18 would not be paid unless an agreement for KMS 2018-19 is executed by the millers. Left with no choice, the Informant entered into an agreement with OP-2, for custom milling for KMS 2018-19 which only safeguarded the interests of OP-2 and ignored the interests of millers.

The Commission held an ordinary meeting and decided to have a preliminary conference with OPs and the Informant on 03.09.2019. In the said meeting, the Informant appeared along with its learned counsel and explained his case in support of the information filed. However, no one appeared on behalf of OP-2 despite due service.

The Commission perused the information, material available on record and noted that OP-1 lays down procurement policy of paddy and custom milling and OP-2 carries out the activities related to procurement of paddy in the State. Further, the Commission observed that OP-2 is engaged in economic activities of procurement of paddy, custom milling of rice and distribution of rice and thus, qualified to be an enterprise within the meaning of Section 2(h) of the competition Act, 2002 ('Act').

With respect to delineation of the *relevant product market*, the Commission noted that obtaining custom milling services was a procurer's market. While, the State procuring agencies were on the demand side, the suppliers of custom milling services were on the supply side of the market. Thus, the *relevant product market* was taken as "*Market for procurement of custom milling services for Rice*" and the *relevant geographic market* was taken as "*State of Odisha*" considering the homogenous conditions prevailing in Odisha which was different from neighbouring states.

To analyse the market position of OP-2, the Commission took note of amount of procurement of paddy and delivery of Rice for KMS 2015-16 which revealed that OP-2 had a significant market share in the total rice delivery, indicating it to be a significant player in the procurement of rice milling services. The Commission examined the allegations pertaining to non-settlement of CMR dues of the Informant and imposition of unfair condition upon millers for entering into agreement for Custom Milling for KMS 2018-19 and found merits in them. Thereafter, the Commission directed the Director General to cause an investigation into the matter.

(Case No. 16 of 2019)



Heard at the BAR

Legal news from India and the world

French Competition Agency, Autorite de la Concurrence ('AdC'), in partnership with its Dutch counterpart, busted a French cartel

AdC, busted a cartel of seven food producers operating in the French market from 2010 to 2014.

The cartel used to supply apple sauce to private labels of large supermarket chains, to catering companies and to the companies operating in the hospitality industry in France.

The cartel concluded secret price-fixing agreements, shared market volumes and customers among each other. The members of the cartel had a combined market share of over 90%. The meetings of the cartel members did not take place at the offices of any of the members but rather, they took place in hotels and restaurants across France.

Netherlands Authority for Consumers and Markets ('ACM') assisted the French competition authority in the dawn raids at the Dutch company.

The first information to the French Competition Authority about the cartel was revealed by a Dutch company viz. Coroos, a cartel member. In return, Coroos was granted exemption from penalty.

Finally, a fine of €58.3million has been imposed on seven food producers.

(Press Release 18.12.2019)

Competition Authority of Israel imposes a fine of NIS 39 Million (11 Million USD) on distributor of Coca Cola

Competition Authority of Israel ('Authority') has found that Central Company, a distributor of Coca Cola, abused its monopoly status in the cola soft drink market in Israel.

The Central Company was a supplier of Coca Cola brands in the carbonated soft drink sector in which it held significant market power.

The Authority found the Company dominant in the ice tea market as well through the presence of its Fuze Tea brand which also has a large market share.

In February 2014, the Authority opened an investigation against the Central Company. The Authority's investigation found that the Central Company abused its power in retail sector, precisely, in the "on-premises beverage market", which includes, inter alia, cafeterias and fast food restaurants that sell cold beverages for immediate consumption.

The Company submitted its written claims in November 2017, followed by subsequent submissions in April 2019.

The Authority after careful examination of all material documents before it, held that Central Company had abused its dominant position. Thus, Authority issued a notice to Central Company showing its intention to impose a monetary sanction of approximately NIS 51 Million on the Company.

This amount was subsequently reduced to NIS 39 Million after partial acceptance by the Central Company regarding the extent of competitive damage that may have been caused as a result of its actions.

(Press Release 25.12.2020)

European Commission initiates investigation into the acquisition of Daewoo Shipbuilding & Marine Engineering

The European Commission ('EC') has initiated an investigation into the proposed acquisition of Daewoo Shipbuilding & Marine Engineering Co Ltd ('DSME') by Hyundai Heavy Industries Holdings ('HHIH'), another shipbuilding group, under the EU Merger Regulation.

The Commission is concerned that the proposed merger between two of the leading cargo shipbuilders in the world, would negatively affect competition in the construction of cargo ships, to the detriment of European consumers or not.

Both HHIH and DSME are South Korean companies which are primarily engaged in shipbuilding. Both of them are involved in producing a wide range of commercial vessels, marine engines and offshore facilities which are used to explore, produce and process oil and natural gas found under the sea.

The EC in its preliminary market investigation found that the proposed transaction may remove DSME as an important competitive force in the following markets: large containerships, oil tankers, liquefied natural gas (LNG) and liquefied petroleum gas (LPG) carriers. The EC believed that these markets have high entry barriers mainly because of the know-how, track-record, or, in some cases, specialisation in the relevant technology.

The EC concluded that it is unlikely that a timely and credible entry from other shipbuilders would counteract the possible negative effects of the transaction.

The EC has decided that it will carry out an in-depth investigation into the effects of the proposed transaction to determine whether it is likely to significantly impede effective competition or not.

(Press Release 17.12.2019)

French Competition Authority, AdC, imposed €150M fine on Google for abusing its dominant position in Google Ads advertising platform

On 6th March, 2015, Gibmedia, lodged a complaint against Google before French Competition Authority, AdC, when Google, without any notice, suspended Google Ads account of Gibmedia.

Gibmedia, a company which operates information websites, had an AdWords account to display advertisements on its websites i.e. info-meteo.fr, pages-annuaire.net, annuaires-inverse.net and info-societe.com. Gibmedia claimed that in January 2015, Google suspended its AdWords account without giving any notice. According to Gibmedia, the procedure and the grounds for suspension were not objective and transparent rather, they were discriminatory.

Google claimed that the suspension was justified since Gibmedia did not comply with three AdWords rules i.e. ban on charging fee for goods or services which were normally free, transparency to consumers with respect to charges/fee and ban on use of concealment techniques.

The AdC decided to investigate into the merits of the case to examine the operating rules governing the operation of Google Ads advertising platform formulated by Google itself. The AdC observed that the functioning of the Google Ads platform was based on the operating rules, which specified the conditions under which an advertiser could advertise. In order to open an account, it was required by each advertiser to expressly agree to respect them.

The AdC noted that the operating rules of Google Ads advertising platform were unclear and its interpretation was frequently changed by Google. The instability in interpretation of the operating rules kept the advertisers in a situation of legal and economic insecurity. Further, the advertisers were exposed to uncertain interpretation of the operating rules which could result in unanticipated suspension of their website and account.

Furthermore, the AdC noted that any changes made in the rules were not communicated to the advertisers. The AdC revisited its decision in the case of navx (*Decision 10-D-30, Press Release 28 October, 2010*), and noticed that Google failed to comply with its commitments given in the navx's case. As per the commitments made in navx's case, Google were to set up a procedure to notify and inform about the changes in its content policy to the advertisers.

Moreover, the operating rules of AdWords were discriminatory. Though, Google suspended Google Ads account of Gibmedia in 2015, yet, at the same time, Google continued to run similar ads on its advertising platforms.

At last, the AdC noted that Google has implemented these practices even though it had been regularly cautioned for its actions contravening the competition law. The European Commission had previously fined it for infringement of another kind but also constituting of an abuse of a dominant position, in the Google Shopping, Google Android and Google Search AdSense cases.

On the basis of above observations, the AdC penalized Google with 150 million Euros for its conduct. Additionally, it ordered Google to clarify the operating rules of its Google Ads advertising platform and review the procedures concerning the notification to the advertisers, of any changes to the operating rules; and clarify the procedures for suspending accounts in order to prevent brutal and unjustified suspension of accounts of advertisers; and set up procedures for alerting, preventing, detecting and treating the breaches of its operating rules, so that measures to suspend Google Ads sites or accounts are strictly necessary and proportionate to the objective of consumer protection.

(Press Release 17.12. 2019)

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