



Monthly Newsletter

# State of Antitrust

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### **EC clears the Acquisition of Activision Blizzard by Microsoft**

The European Commission (“**EC**”) has approved the proposed acquisition of Activision Blizzard (“**Activision**”) by Microsoft Corporation (“**Microsoft**”) conditionally, upon the full compliance of the 10-year commitment offered by Microsoft that addresses the competition concerns of the EC.

Both the companies are involved in developing and publishing games for PCs, consoles, mobile devices and distribution of games for PCs. Further, Microsoft also distributes games for consoles and offer a gaming console, Xbox, along with a wide range of products and services. The game portfolio of Activision includes famous franchises like ‘Call of Duty’, ‘World of Warcraft’, ‘Overwatch’ and ‘Diablo’.

The EC preliminarily opined that the proposed acquisition could harm competition in: (i) the distribution of console and PC video games, including multi-game subscription services and cloud game streaming services; and (ii) the supply of PC operating systems and, therefore, commenced an in-depth investigation.

The EC, in its in-depth investigation found that Microsoft would not cause competitive harm in distribution of consoles since: (i) Microsoft has no incentive to refuse distribution of Activision’s games to rivals like Sony as it is the leading distributor of console games; (ii) even if Microsoft withdrew the game ‘Call of Duty’ from Sony PlayStation consoles, this would not significantly impact the market since the game is not as popular in the European Economic Area (“**EEA**”), as compared to the other regions, and Sony could leverage its extensive game catalogue and market position to ensure its competitiveness in the market.

The proposed acquisition would also not cause competitive harm in multi-game subscription services the games of Activision would not have been made available for multi-game subscription services, with or without, this transaction, since this would adversely affect sales of individual games.

However, the EC observed that the proposed acquisition would cause harm in the market of distribution of PC and console games via cloud game streaming services. Cloud game streaming enables users to play games run on remote servers that allow streaming of game on any device, even if the hardware of such a device does not support the game. While cloud gaming is at a nascent stage, it is a growing industry with high potential. Activision’s games are expected to promote the growth of cloud game streaming. However, post-acquisition, if Microsoft makes Activations’ games exclusive to its own cloud game streaming service, then it is likely to reduce competition in the distribution of games via cloud game streaming. This would also strengthen Microsoft’s PC operating system, Windows, if it degrades the streaming of Activision’s games on other PC operating systems.

To address the aforementioned concerns of the EC, Microsoft proposed the following commitments – (i) a free license to consumers in the EEA to stream via any cloud game streaming service of all present and future Activision’s games; (ii) a corresponding free license to cloud game streaming service providers which would allow gamers to stream Activision’s games on their service.

The EC determined that the remedies address all competition concerns since these licenses will ensure that the gamers that play Activision’s games will be able to stream them on any cloud game streaming service and on devices that use any operating system with the same quality and content as that available for traditional download. The commitment is also expected to boost the development of the game streaming technology in the EEA since, currently, Activision does not stream its games or license them to any cloud game streaming services.

Also considering the positive feedback from the market by rival cloud game streaming service providers, the EC concluded that, subject to the fulfillment of the commitments, the proposed acquisition will unlock significant consumer benefits and therefore, approved the transaction. [\(Press release dated 15.05.23\)](#)

### **Netherland’s ACM found Three Egg-Processing Companies engaging in Price-Fixing Agreements with Farmers**

The Netherland’s Authority for Consumers and Markets (“**ACM**”) has fined three egg-processing companies namely Interovo, Wulro and Global, for concluding illegal price-fixing agreements in relation to procurement of eggs from “laying hens” poultry farmers.

The companies are engaged in procuring industrial eggs from framers that are used as raw material in food-processing industry. The companies’ operations include processing these industrial eggs for manufacturing liquid and powdered egg products, sold to patisseries and sauce manufacturers.

Upon investigation, the ACM found that starting from 2015, Wulro and Interovo engaged in exchange of competitively sensitive information, coordinated prices and allocated suppliers among themselves, for over a year. Thereafter, starting from 2016, Wulro and Global had done the same for over three years. The directors of these companies have been in regular contact through WhatsApp, regarding such arrangements. It further, held that as a consequence of this buyer cartel the farmers got lower prices for their eggs which resulted in harm to the farmers as well as the consumers.

[\(Press release dated 10.05.23\)](#)





## UK CMA provisionally finds Cartelisation in Government Bonds Market

The Competition & Markets Authority (“CMA”) in the United Kingdom (“UK”) has been investigating trade in UK government bonds and has provisionally found that, in the aftermath of the global financial crisis, 5 major Banks operating in the UK – Citigroup Inc. (“Citi”), Deutsche Bank Aktiengesellschaft (“Deutsche Bank”), Hong Kong & Shanghai Banking Corporation (“HSBC”), Morgan Stanley and RBC Europe Limited (“Royal Bank of Canada”/“RBC”) may have indulged in anti-competitive conduct.

The banks have been sharing competitively sensitive information through a series of one-to-one conversations in “Bloomberg Chatrooms” messaging application at varying times between 2009 and 2013. According to CMA, a small number of traders who worked at the banks have been engaged in information exchange(s) in relation to -

- (i) the sales of government bonds (“gilts”) via auction, by the UK Debt Management Office on behalf of HM Treasury (**Her Majesty Treasury**);
- (ii) subsequent trade in gilts and;
- (iii) buy-back auctions of gilts by the Bank of England.

Gilt is a UK government bond issued, by the HM Treasury, through the UK Debt Management Office to finance the UK government’s cash requirements.

The individual or businesses lend money to the government, in return for which the government pays certain interest after the gilt has reached its date of maturity.

The investigation was initiated at the instance of Deutsche Bank when it alerted CMA, under leniency policy of the UK Enterprises Act, 2002, of its participation in the sensitive information exchange. Thereafter, Citi also made a disclosure while the other three banks have not admitted any wrongdoing. Under the leniency policy, if both the Banks continued to cooperate

in the investigation process, Deutsche Bank will not be fined and Citi will receive a deduction in the fine amount.

The Executive Director of Enforcement at the CMA, commenting on the provisional finding of competition law violation by the banks, has opined, “*This could have denied taxpayers, pension savers and financial institutions the benefits of full competition for these products, including the minimisation of borrowing costs.*”

[\(Press release dated 24.05.23\)](#)

## FTC Moves to Block Acquisition of Horizon Therapeutics plc by Amgen Inc.

The Federal Trade Commission (“FTC”) filed a lawsuit in a District Court in the United States (“US”) seeking to block the acquisition of Horizon Therapeutics plc (“Horizon”) by Amgen Inc., one of the largest biopharmaceutical companies in the world, alleging that the acquisition is likely to substantially lessen competition or create monopoly in the market for sale of drugs that treat Thyroid Eye Disease (“TED”) and Chronic Refractory Gout (“CRG”).

The FTC has alleged that Amgen Inc., by leveraging its broad drug portfolio, provides rebates to entities like Pharmacy Benefit Managers (“PBM”) and the payers (health plans sponsors) that determine access of medications for patients, to ensure that the drugs of Amgen Inc. are in a more favourable position when compared to its rivals. Some drugs of Amgen Inc. like Enbrel have enormous sales, generating over \$4 million in global sales, therefore, even small enhancements to rebates ensure that PBM and payers accept contract for cross-market rebating and bundling. Further, Amgen Inc. has a history of expanding their drug portfolio through acquisitions and leveraging its extensive portfolio to gain advantage over its rivals.

Post-acquisition, Amgen Inc. would have the ability and the incentive to



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*Legal news from  
India and the world*

entrench a monopolistic position of Horizon’s Drugs; especially the two “blockbuster” drugs:

- (i) Tepezza, the only drug treatment for TED approved by the Food and Drug Administration (“FDA”) and;
- (ii) Krystexxa, the only FDA-approved treatment for CRG.

While there is potential competition in the markets from clinical-stage rivals that could capture substantial market share upon entry in the markets, the proposed acquisition threatens to suppress emerging competition and entrench the dominance of Horizon in these markets through Amgen Inc. and its ability to pressurise PBM and payers, through rebates, to disfavour other rivals of Tepezza and Krystexxa.

A Director at the FTC Bureau of Competition stated that, “*Rampant consolidation in the pharmaceutical industry has given powerful companies a pass to exorbitantly hike prescription drug prices, deny patients access to more affordable generics, and hamstring innovation in life-saving markets.*”

Arguing that the substantial and effective entry of competitors is unlikely to be timely or sufficient to offset the anti-competitive effects of the proposed acquisition, FTC has filed an antitrust suit to block the consummation of the transaction.

[\(Press release dated 16.05.23\)](#)

## **European Commission Approves UBS' Acquisition of Credit-Suisse**

The European Commission has given unconditional approval to UBS Group AG's ("UBS"/"Acquirer") acquisition of Credit Suisse Group AG ("Credit Suisse"/"Target").

As per the Merger Agreement, dated 19 March 2023, Switzerland's largest bank – UBS decided to buy its beleaguered and long-time rival Credit Suisse for about \$3.2 billion. Both UBS and Credit Suisse are based out of Switzerland and have been engaged in offering wide range of banking and financial services including retail and corporate banking services, investment banking services, asset management and wealth management services.

The takeover decision by UBS took place in the backdrop of sudden nosedive in Credit Suisse's shares which plummeted to more than 30 percent in a single day; along with recent years' controversies and scandals faced by Credit Suisse which resulted in further loss of trust among investors in aftermath of Silicon Valley Bank's meltdown. The deal considered as the world's biggest banking deal since the 2008 financial crisis, has forged "*a wealth manager with an unrivalled global reach.*"

The EC, on request of the parties, had, earlier, allowed the merger derogation from standstill obligation in light of the financial difficulties faced by Credit Suisse and the consequent risk of financial instability. Standstill obligation restricts the companies from implementing the merger until it is cleared by the EC.

In its merger assessment report the EC opined that the deal will not have a significant impact on competition, in the markets analyzed in the EEA, considering competitive pressure from numerous strong local players and also major global banks operating in the financial services market.

[\(Press release dated 25.05.23\)](#)

## **Italian Competition Authority Accepted Commitments by Trenitalia over its Abuse of Dominance in the Regional and Intercity Rail Network**

The Italian Autorita' Garante della Concorrenza e del Mercato ("**Italian AGCM**") has accepted the commitments proposed by Trenitalia, the primary train operator in Italy, in a case involving its abuse of dominant position in "*markets for regional and medium-long-distance public passenger rail transport services on the conventional network.*"

Prior to the proceedings against Trenitalia by the Italian AGCM, it was the only entity that could offer integrated ticketing options through a unified sales interface; wherein along with the regional and intercity rail network, in which Trenitalia has monopoly, it also provided ticket sales for high-speed passenger train service. It competes with Italo - Nuovo Trasporto Viaggiatori ("**NVT**") in providing high-speed passenger transport services. According to the Italian AGCM, Trenitalia stands in a market position where it would have leveraged the exclusive service contracts stipulated with the competent bodies to extend and preserve its market power in high-speed passenger train service.


Such level of integration was not available with any of the competitors of Trenitalia, including NVT, who was unable to replicate the competitive advantages of Trenitalia.

The commitments proposed by Trenitalia results in NVT being able to market Trenitalia's regional and intercity train service tickets along with its own high-speed services. Further, additional features like onboard monitors and loudspeaker announcements of NTV high-speed connections will be made on available on the regional and intercity service trains.

[\(Press release dated 03.05.23\)](#)

### **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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