



Monthly Newsletter

# State of Antitrust

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

**CCI enters into MoU with GeM for detecting cartels in e-Markets**  
**German Competition Agency imposes restrictions on Facebook’s data collection and data use policy**

*Between the Lines*

**Amazon under investigation for unfair trade practices in Austria**

**Heard At The Bar**

- **Tobii/Smartbox merger faces in depth investigation in UK**
- **Competition Agency of South Africa takes note of guilty plea of Standard Chartered Bank in New York**

AND MORE...



### **CCI enters into MoU with GeM for detecting cartels in e-Markets**

The Competition Commission of India ('Commission' or 'CCI') has entered into a Memorandum of Understanding ('MoU') with Government-e-Marketplace ('GeM'), a state-of-the-art, national public procurement platform developed by Ministry of Commerce and Industry, to ensure a fair and competitive environment in the e-Marketplace platform.

The objective of the GeM platform is to enhance transparency, efficiency and speed in public procurement and to facilitate online procurement of goods & services by various Government Departments/Organisations and PSUs. The GeM platform has been developed and designed with tools such as e-bidding, reverse e-auction and demand aggregation to facilitate users in procuring goods and services. This will also help users in achieving the best value for their money.

The CCI and GeM understand the importance of advanced analytical tools, processes and softwares required for identification and detection of malpractices such as bid rigging and cartelization, involved in the online procurement of goods and services. The purpose of the MoU is to pool the existing knowledge and resources of the CCI and GeM to facilitate the CCI in detecting anticompetitive practices in the public procurement.

The GeM platform will also help in removing entry barriers for bonafide sellers, who wish to reach out to the Government buyers and participate in public procurement. *(Press Release 08.02.2019)*

### **German Competition Agency imposes restrictions on Facebook's data collection and data use policy**

The Federal Cartel Office of Germany ('Bundeskartellamt') has imposed far-reaching restrictions on Facebook after finding the terms of service and collection/processing of data policy of Facebook in violation of the European data protection rules.

According to Facebook's terms and conditions, users could only use the social network under the precondition that the user must agree to allow Facebook to collect user's Facebook and non-Facebook data unconditionally. The Bundeskartellamt noted that such a precondition on users cannot be taken as voluntary consent and that Facebook's services must not be subject to user's consent to allow Facebook to collect and use their data.

With regard to the data collection and data processing policy, the Bundeskartellamt found that the Facebook had the policy of combining and collecting users data from sources such as Facebook website, Facebook owned services like WhatsApp, Instagram and other third party websites having interfaces such as 'Like' or 'Share' buttons. The combination of the data from these sources helped Facebook to build a unique data base for each individual user and to gain significant market power.

During the investigation, the Bundeskartellamt found that Facebook was holding a dominant position in the German market of social networks with a market share of more than 90% daily active users and more than 80% monthly active users. While delineating the relevant market, the Bundeskartellamt excluded services like Snapchat, YouTube, LinkedIn and Xing as these services only offer parts of a social network.

The Bundeskartellamt said that the extent to which Facebook collects, merges and uses data constitute an abuse of dominant position. Further the precondition and unrestricted collection of the data by Facebook was held to be exploitative and resulted in abuse of its dominant position in the social network.

By this decision, Facebook is now restricted to collect and merge data from different sources and also refrained from excluding the users from its services who do not consent to share their data. *(Press Release 07.02.2019)*

### **Singapore Competition Authority presses charges against leading hotels for unfair conduct**

The Competition and Consumer Commission Singapore ('CCCS') has imposed a cumulative penalty of S\$ 1,522,354 on owners/operators of the leading hotels viz. Capri, Crowne Plaza and Village Hotels as they exchanged commercially sensitive information relating to the hotel room accommodation services to corporate customers in Singapore.

During the investigation, the CCCS found that the sale representatives of the Capri, Village Hotels and Crowne Plaza exchanged information and disclosed to each other the corporate room rates which were negotiated with the specific customers on a confidential basis. The sales representatives of these hotels also discussed future price-related strategies such as their proposed price increases for the following contractual year, their proposed bid prices in response to customer requests, and whether or not to agree to a particular customer's price reduction request in the course of corporate rate negotiations.

The CCCS was of the view that if the exchange of commercially sensitive information had not taken place, the prices, offered to corporate clients, would had been more competitive. Further, the CCCS said that conduct of these hotels has caused serious harm to the competition in the hospitality sector.

The Commission took into account all the mitigating and aggravating factors while imposing this penalty for infringing the provisions of the Competition Act. *(Press Release 30.01.2019)*



## Heard at the BAR

*Legal news from India and the world*

### Competition Agency of South Africa takes note of guilty plea of Standard Chartered Bank in New York

The Competition Commission South Africa ('CCSA') has taken note of the consent agreement between Standard Chartered and New York State Department of Financial Services in New York.

As per the consent agreement, Standard Chartered Bank has pleaded guilty for manipulating the currency trading in spot market in the period between 2007 and 2013.

The CCSA had been investigating a case of price fixing and market allocation in Forex trading since April 2015.

The CCSA in February 2017 referred to the Tribunal a collusion case, against Bank of America Merrill Lynch International Limited, BNP Paribas, JP Morgan Chase & Co, JP Morgan Chase Bank N.A, Investec Ltd, Standard New York Securities Inc., HSBC Bank Plc, Standard Chartered Bank, Credit Suisse Group, Standard Bank of South Africa Ltd, Commerzbank AG, Australia and New Zealand Banking Group Limited, Nomura International Plc., Macquarie Bank Limited, ABSA Bank Limited (ABSA), Barclays Capital Inc, Barclays Bank plc, for prosecution.

Since February 2017, the CCSA has been engaged in protracted litigation with Standard Chartered Bank, on pre-trial issues.

The CCSA took the note and said that it will consider the impact of the consent agreement on the ongoing Forex litigation. *(Press Release 05.02.2019)*

### Danish Demolition Company fined DKK 5 million for bid rigging

A Danish Demolition Company viz. CMP Nedriving ApS ('CMP') has been fined 5 million Danish Krone (DKK) by the City Court of Hillerod after being found to have coordinated the bids with competitors in 11 cases.

The coordination with the competitors took place in the period from September 2011 to October 2013. Two executives

of the demolition company were also found guilty and were penalised with a fine of DKK 125000.

The investigation by the Danish Competition and Consumer Authority ('DCAA') began in autumn of 2015.

During the investigation, the DCAA conducted inspections at the premises of demolition companies.

Based on these inspections and investigation, the DCAA decided to refer the case to the State Prosecutor in 2016.

The present case is a part of other ongoing cases in which several demolition companies are accused of rigging the bids from May 2011 to October 2013. The rulings in the remaining cases against the demolition companies are expected to be declared in the coming months. *(Press Release 18.02.2019)*

### Tobii/Smartbox merger faces in depth investigation in UK

Competition and Markets Authority ('CMA') of UK has referred Tobii's purchase of Smartbox for an in depth investigation after finding competition concerns.

Both the companies are direct competitors and developers of technological solutions, which enable people with complex speech and language problems to communicate. These solutions, known as augmentative and assistive communication solutions, include specialised hardware and software, such as speech-generating devices, eye gaze cameras and language systems.

The CMA in its phase 1 investigation was skeptical that the proposed horizontal merger will lead to a reduced range of products, higher prices and reduction in development of new products. In January 2019, the CMA offered both the transacting parties an opportunity to put forth acceptable solutions to resolve the CMA's competition concerns.

Tobii had offered undertakings to address the CMA's concerns. After considering the undertakings, the CMA was not convinced with the

solutions and therefore, decided to refer the merger for an in-depth Phase 2 investigation.

A group of independent panel members, supported by a case team of CMA staff, will now make a decision on the merger. *(Press Release 08.02.2019)*

### European Commission to investigate 8 banks for collusion

The European Commission ('EC') has sent Statement of Objections to eight banks after it formed a preliminary opinion that the traders employed by the 8 banks breached the EU antitrust rules as they exchanged commercially sensitive information and coordinated on trading strategies at the time of acquiring/trading European government bonds ("EGBs"). European government bonds are sovereign debt securities, issued in Euro, by the central governments of the Eurozone Member States on which a predetermined rate of interest is earned by the ECBs holder.

The Commission was concerned with the conduct of these banks and suspected that these banks participated in a collusive scheme at different periods between 2007 and 2012 with an aim to distort competition in the debt market.

If the Commission's preliminary view is confirmed, such behaviour on the part of the banks will violate Article 101 of Treaty of Functioning of European Union (TEFU) which prohibits anti-competitive business practices. *(Press Release 31.01.2019)*

## **Amazon under investigation for unfair trade practices in Austria**

The Austrian Federal Competition Authority ('BWB') has decided to initiate investigation against Amazon after receiving several complaints from Austrian trade association alleging unfair trade practices and abuse of dominant position by Amazon.

According to the information, Amazon indulged in unfair trade practices such as abrupt termination of seller-accounts, obligation to disclose purchase prices, adding of incorrect delivery details by Amazon on the sellers' accounts, unjustified loss of products rankings of sellers, and jurisdiction clause to complicate the procedure to take legal actions. Before opening the investigation, the BWB discussed the matter with the European Commission and the Germany's Federal Cartel Office ('Bundeskartellamt'). The BWB is intending to work closely with the Bundeskartellamt which has already initiated investigation against Amazon for abuse of dominant position. (*Press Release 14.02.2019*)

## **European Commission approves the acquisition of joint control over Virgin Atlantic by Air France-KLM, Delta and Virgin Group**

European Commission ('EC') has approved acquisition of 31% of joint control over Virgin Atlantic by Air France-KLM, Delta Air Lines Inc. and Virgin Group. During the course of investigation, the EC examined the impact of the proposed acquisition and reviewed three markets i.e. air transport of passengers, cargo air transport services, maintenance repair and overhaul services.

With regards to the market of air transport of passengers, the EC observed the overlapping of direct and indirect flights and routes of the transacting parties and concluded that the overlapping of the same will not raise any competition concerns.

The EC also did not find any competition concerns relating to other two markets i.e. cargo air transport services and maintenance repair & overhaul services because the transaction had very limited impact in these markets and also because the transacting parties were not close competitors of each other.

Therefore, after reviewing the transaction, the EC concluded that the proposed transaction would raise no competition concerns in any of the relevant markets and hence, cleared the case unconditionally. (*Press Release 12.02.2019*)

## **Brazil Competition Agency busts underground and submarine power cables cartel**

On 13<sup>th</sup> Feb 2019, the Competition Authority of Brazil ('CADE') has referred six companies and two individuals to CADE's Tribunal for their involvement in the international cartel in the market of underground and submarine power cables.

The six companies namely Exsym Corporation, LS Cable LTD, Nexans, Prysmian S.p.A, Taihan Electric Wire and Viscas Corporation, operated the cartel from early 90s until, atleast July 2004.

According to the CADE, the members of the cartel colluded to fix prices and allocate territories and projects. The investigation by the CADE pointed out that the collusion was characterized by the regular exchange of commercially sensitive information, relating to the production capacity, supply shortage, requirement of client quantity etc.

The conduct of the cartel had a direct effect on the end consumers as the cartel affected price of the cables, which forms an essential component in power transmission. This resulted in higher costs in distribution of power to general public at large.

The companies, if convicted by the CADE's Tribunal, may be fined with a penalty up to 20% of their gross income and the individuals may be fined in the range of BRL 50 thousand to BRL 2 billion. (*Press Release 13.02.2019*)

### **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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