



KK SHARMA  
LAW OFFICES

Monthly Newsletter

# State of Antitrust

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### **MakeMyTrip Pvt. Ltd. and Oravel Stays Pvt. Ltd. face CCI probe for alleged abuse of dominant position**

The Competition Commission of India ('CCI'/'the Commission') has directed the DG to cause an investigation against MakeMyTrip Pvt. Ltd. ('MMT'/'OP-1') and Oravel Stay Pvt. Ltd. ('OYO'/'OP-2') (collectively 'OPs') on an Information filed by Rubtub Solutions Pvt. Ltd. ('Informant') alleging that the OPs had entered into an anti-competitive agreement. It was contended in the Information that OP-1 is abusing its dominant position in the relevant market for online intermediation services for booking of hotels in India. OP-1 is dominant in the said relevant market because of its high market share (63%) in the relevant market; its superior market power due to its economic superiority in relation to other competitors; its vertical integration with OYO and existence of high entry barriers given the network effects.

As per the information, the Informant works under the brand name 'Treebo'; which is a competitor to OYO, in the business of providing franchising services to budget hotels in India. Three allegations are made by the Informant - Firstly, Treebo and its partner Hotels were not listed on the OP-1's website after an arrangement between MMT and OYO. Secondly, there was an imposition of 'Price Parity Arrangement' by MMT through Chain Agreement which restricted it from Booking.com/ Paytm Portals. Thirdly, there was 'Exclusivity Condition' by MMT on Treebo which restricted it from Booking.com/ Paytm Portals and a transition period was fixed for a period of 72 hours and 30 days check-in for hotels situated in Category A and Category B, respectively.

The Commission was of the view that, *prima facie*, a case of contravention against OP-1 for abuse of dominant position under Section 4(2)(a)(i) and 4(2)(c) of the Competition Act, 2002 ('the Act') is made out on account of all the three allegations in the aforesaid relevant market. Further, a case against MMT and OYO for entering into a vertical arrangement having an appreciable adverse effect on competition in the market is also *prima facie* made out under Section 3(4) read with Section 3(1) of the Act. The CCI thus directed the Director-General, u/s 26(1) of the Act, to investigate the matter along with Case No. 14 of 2019 and submit a consolidated an investigation report.

(Case No. 01 of 2020)

### **Flipkart challenges Anti-trust probe after Amazon gets a stay from Karnataka High Court**

The Competition Commission of India ('CCI'/'Commission') has ordered an investigation into the alleged anti-competitive activities of Amazon and Flipkart on 13th January, 2020. Subsequently, Amazon challenged the CCI's probe before the Karnataka High Court. It succeeded in getting an interim stay against the impugned order as it was found to be 'perverse, arbitrary, and untenable in law'. Consequently, Flipkart also filed a writ petition before the Karnataka High Court challenging the same probe. It was also granted an interim stay against the probe. It had contended that the impugned order was based on mere allegations and there was no evidence on record to form a *prima facie* opinion. The High Court observed that CCI's orders were based on such allegations which have no material evidence on record to prove that they entered into exclusive deals with smartphone manufacturers in violation of competition law.

(Case No. 40 of 2019)

## **European Commission fines hotel group Meliá €6.7million for discriminating between customers**

The European Commission ('EC'/'**Commission**') has fined Spanish Hotel Group, Meliá, for including anti-competitive clauses in its agreements with tour operators which illegally discriminated between customers based on their country of residence. The Commission also investigated whether nationality of customers was a relevant consideration.

In Investigation, it was found that the standard terms and conditions in the contracts between Meliá and tour operators contained a clause validating them for reservations where consumers were residents in specified countries. Because of this, the customers were not able to see full hotel availability or book rooms at best prices.

According to the EU Competition Commissioner, Margrethe Vestager, when many people were trying to book their trip for summer vacation and were looking for best deals and offers, Meliá prevented tour operators from freely offering hotel accommodation everywhere in Europe. Resultantly, different consumers had access to different offers and prices based on their nationality which is illegal under antitrust laws. Consumers should be able to make full use of the Single Market and to shop around for the best deal.

It was acknowledged by the Commission that there was infringement of EU competition rules and corporates on the provisions of evidence. The fine imposed by the commission was €66,78,000. Meliá got some credit for offering cooperation and, therefore, secured itself a 30 % reduction in fine.

*(Press Release 21.02 2020)*

## **UK'S CMA Fines 3 Berkshires Estate Agents**

The Competition and Markets Authority ('CMA') found 4 Berkshires estate agents to be in violation of competition law by taking part in a price-fixing cartel which began in 2008.

For nearly 7 years, the 4 companies conspired to set and maintain minimum commission rates for the sale of residential properties in Wokingham, Winnersh, Crowthorne, Bracknell and Warfield, where they were the leading agents at that time.

The CMA observed that competition law exists in the market to ensure that businesses compete in a lawful way, customers are protected. Accordingly, the CMA took action against three, out of the four estate agents, which were fined £605,519.

*(Press Release 20.02.2020)*

## **Italian Competition Authority imposes fine against top four telecom operators**

The Italian Competition Authority ('AGCM') started an investigation against the country's top four telecom operators Fastweb, TIM, Vodafone and Wind Tre in 2018 as they agreed on an anti-competitive cartel with regard to the re-pricing carried out in the return to monthly billing. The four operators came together with a 28 days billing cycle from monthly billing, with a motive to increase the percentage at 8.6%. In March 2018, The AGCM stopped this practice holding the four operators to be guilty of violating competition laws.



## **Heard at the BAR**

*Legal news from India and the world*

The AGCM has observed the case for 2 years and made the decision to fine the companies a total of €228 million. TIM will have to pay €114 million whereas Vodafone have to pay €60 million and both Fastweb and Wind Tre have to pay €39million.

*(Press Release 31.01.2020)*

## **European Commission fines NBC Universal €14.3 million**

The European Union Commission has imposed €14.3 million fine on a US based company, NBC Universal, for illegally restricting sales of film merchandise products. Licensed merchandise products are extremely varied but products having logos or images are protected by intellectual property rights. An investigation took place in 2017 by the Commission and found that NBC Universal has non-exclusive licensing agreements which breached EU competition rules. The Commission concluded that NBC Universal's illegal practices partitioned the Single Market and prevented licensees in Europe from selling products cross-border and across customer groups, to the ultimate detriment of European consumers.

*(Press Release 30.01.2020)*

**South Africa Competition Commission prosecutes Prasa for abusing its dominant position.**

The Competition Commission of South Africa (**‘the Commission’**) has referred the Passenger Rail Agency of South Africa (**‘Prasa’**) and its subsidiary Autopax to the Competition Tribunal for allegedly abusing its dominant position. It found that Prasa was charging excessive prices from the operators for the use of Park Station in Johannesburg. It was also found that Prasa favored Autopax and restricted access to Park Station for other bus operators. Prasa terminal facilities are for both long distance bus operators as well as to passengers as to conveniently, safely and seamlessly connect different modes of transport at a single location. No alternate intermodal terminal facility is available in Johannesburg.

Competitors, such as Unitrans Passenger, the owner of Greyhound, Citi Liner and Megabus, Intercap, Eldo Coaches, Africa People Mover (APM), Molla’s Transport Services and Cream Magenta which operates Eagle Liner and Intercity Xpress, had filed a complaint to the Commission against Prasa. The Commission further observed that Prasa introduced a pay-on-use system together with hourly access fees per bus in December 2013 at Park Station. This new system increased the bus operator’s cost of access threatening their sustainability and expansion. The access fee is currently R480 excluding VAT, per hour per bus at Park station. Also, Prasa charges penalty of R150 for every 15 minutes. The Collapse of the other bus operators will lead to the market being dominated by Autopax. The Commission is seeking an administrative penalty against Prasa not exceeding 10% of its annual turnover as well as an order directing it to stop abusing its monopoly at Park Station.

*(Press Release 10.02 2020)*

**Netherlands Probes a Possible Waste Products Cartels**

Netherlands Authority for Consumer and Markets (**‘ACM’**) is conducting an investigation into possible buyer cartel involving reusable products. ACM conducted raids at various buyers and suspects that the buyers secretly made illegal arrangements involving the purchasing price by dividing suppliers among themselves.

This restricts the suppliers’ ability to sell. Buyers’ cartels like these are anti-competitive as price fixing agreements harm suppliers. The ACM will conclude its investigation on whether competition law has been violated or not and will, accordingly, impose fines on the various cartel members.

*(Press Release 20.02 2020)*

**KK Sharma Law Offices**

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