



Monthly Newsletter

State of Antitrust

May 2020; Volume 7 Issue 5



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

- COVID-19 Lock Down Repercussions

HEARD AT THE BAR

- Hellenic Competition Authority dawn raids companies in the food sector; Greece
- ICA initiates proceeding against another online platform; Italy

- FAS imposes fine on companies for refusing to provide data relating to increase in food prices; Russia

BETWEEN THE LINES

- Booking.com fined HUF 2.5 billion for unfair commercial practices

AND MORE...

COVID-19 Lock Down Repercussions

It is an open secret that, worldwide, everyday life has come to a grinding halt in view of the anxiety of different countries to snap or, at least, retard the transmission chain of Coronavirus causing COVID-19.

Starting from Janta Curfew, on March 22, 2020, India also went into complete lockdown which still continues to be in force as of writing of this newsletter. As a responsive competition agency, the Competition Commission of India ('Commission') also suspended all filings in relation to section 3 and 4 of the Competition Act, 2002 ('the Act'), all notifications in relation to combinations under section 6 and 20 of the Act, pre-filing consultations and all other filings, submissions and proceedings under the Act and Regulations made thereunder, including matters before the Director General ('DG').

Otherwise also, in other judicial functioning, even the Supreme Court of India is affected, permitting only very urgent hearings in a video conference mode. Subsequent to the original notice of announcement dated March 23, 2020, vide another notice dated April 13, 2020, the Commission has made arrangements for minimising contact, in tune with the overall intent of suppressing the spreading transmission of Coronavirus by electronic filings before the Commission. The dates when the Commission shall resume normal functioning are to be intimated later.

(Public Notice 13th April, 2020)

COVID-19 Advisory to Businesses

The entire newsfeed is full of the havoc created by outbreak of COVID-19 pandemic, having its roots in China and the consequent extreme shortage of medicare devices and materials including the different links in the supply chains like critical health care products and other essential commodities/services – be it the testing kits – of various hue and technology – Personal Protection Equipments ('PPEs'), applicable preventive masks, whether N-98, surgical or otherwise, or ventilators or gloves or sanitizers, including the pharmaceutical products which, in the short span of learning by hit and trial, have been believed to be of help in either control of spread or in alleviation of severity of the attack. There has been a tremendous load on the entire supply chain of these critically needed products. In times of national emergency, when every day counts either the Governments or Local Authorities or Hospitals, or anyone else for that matter, can sit on ceremony and start insisting on following of lengthy due process including the adherence to the provisions of the Competition Act, 2002 ('the Act') and, resultantly, cause delay in the procurement of the critically needed items. The already strained health care system, involving doctors and nurses working for long hours, can be further adversely affected if there are inordinate delays in the availability of medical essentials to the frontline workers. It is with this aim in mind that the Commission has come out with an 'Advisory to businesses in times of COVID-19'. This advisory takes note of the significant changes in the supply and demand patterns arising out of the extraordinary situations caused by COVID-19 and has observed that businesses may need to coordinate certain activities by way of sharing of data on stock levels, timings of operations, sharing of the distribution network and infrastructure transport logistics, R&D, production etc. continued supply and fair distribution of involved healthcare products.

Seen in the light of prohibition of a conduct that causes or is likely to cause an Appreciable Adverse Effect on Competition ('AAEC') under the Act, including the presumption of certain concerted actions between competitors to cause an AAEC, the Commission has pointed out to the exceptions where this presumption is not applicable to joint ventures when such agreements are for increasing efficiency in production, supply, distribution, acquisition or control of goods or provision of services. Further, by way of ample clarification, the Commission has also pointed out the factors of determination for AAEC which, amongst others, include the accrual of benefits to consumers, improvement in production and distribution of goods for provision of services and promotion of technical scientific and economic development by means of production or distribution of goods or provision of services.

Thus, by way of this informative advisory, the Commission has contributed its own bit in ensuring that the supply chains of critical components is not affected and businesses do not hold back from assisting in maintaining critical supply chain so long as all the decisions are based on good reasoning of enhancing efficiencies. In any case, this is merely stating the obvious as this is a part of the Act. Nonetheless, it does give comfort to businesses engaged in the critical components of supply chain. It is seen that other competition agencies also have taken similar steps.

(Public Notice 19th April 2020)



Heard at the BAR

Legal news from
India and the world

Hellenic Competition Authority dawn raids companies in the food sector; Greece

The Hellenic Competition Commission ('HCC') responding to press releases regarding significant increase in the price of citrus products, carried out dawn raids at undertakings and associations of undertakings which are active throughout Greece in the food sector, particularly those in the production of citrus products.

The dawn raids by the HCC were a follow up action in respect of its investigation in the health product and food sector, which witnessed surge in anti-competitive practices in the form of price rise of the essential commodities due to ongoing Covid-19 outbreak.

(Press release 22nd April 2020)

Competition Commission of South Africa to impose R11 Million fine on Mask Distributor for inflating price

MATUS, a company with offices in Johannesburg, Cape Town and Durban has agreed to pay an administrative penalty of R5.9 million after it admitted that it inflated gross profit margins in respect of 'essential hygienic products' such as masks, gloves and personal protecting gears.

The Competition Commission initiated investigation in the matter when it obtained information that MATUS was inflating prices of dust masks. Subsequently, the Commission initiated a probe and found out that MATUS unreasonably increased the prices of dust masks in contravention of the Competition Act and Regulation 4 of the Consumer Protection Regulations.

After being held guilty, MATUS committed to reduce its gross profit margin on masks to acceptable levels and to contribute additional R5 million to the Solidarity Fund for Covid-19.

(Press release 29th April 2020)

FAS to impose fine on companies for refusing to provide data relating to increase in food prices; Russia

The Federal Antimonopoly Service ('FAS') of Russia received information from the regional Ministry of Economic Development, Industry and Trade that large food suppliers were increasing the prices of cereals, flour, sugar and semi-finished meat products.

In response to the information, the FAS requested the companies to provide necessary documents and data for inspection.

Some companies, however, failed to comply with the FAS request, whereas, some did not provide full information. As a result, an administrative case has been opened against such companies and a fine is likely to be imposed by the FAS.

(Press Release 30th April 2020)

ICA initiates proceeding against another online platform; Italy

The Italian Competition Authority ('ICA'), after initiating probe against Amazon and eBay, has launched sub-proceedings against the US company that owns the www.wish.com platform (Wish Platform) which provides *market place* services to consumers resident in Europe.

It was alleged that sellers on the Wish platform were offering test kits for home diagnosis of *coronavirus* – with specifications expressly referring to the possibility of detecting the antibodies of the new *coronavirus*. The Investigation against the Wish Platform is aimed at assessing the responsibility of the Companies as owners of the Wish marketplace Platform in the *e-Commerce* sector during this specific time of health emergency.

(Press Release 3rd April 2020)

FTC sends warnings to marketers to stop making unsupported claims of effective treatment of Coronavirus

The Federal Trade Commission (FTC) announced that it has sent 21 additional warning letters to marketers throughout the United States to stop them from making unsubstantiated claims that their products and therapies can treat or prevent coronavirus (COVID-19).

The warning letters addressed a wider range of products and supposed treatments, including some that may appear more medically sophisticated to consumers, such as acupuncture, intravenous (IV) "therapies" with high doses of Vitamin C, ozone therapy, and purported stem cell treatments. However, there was currently no scientific evidence that these products or services could treat or cure coronavirus.

In the letters, the FTC stated that the efficacy claims made by the marketers were unsubstantiated because they were not supported by scientific evidence.

The letters advise the recipients to immediately cease making all claims that their products can treat or cure coronavirus and to notify the FTC within 48 hours about the specific actions they have taken to address the agency's concerns.

(Press Release 23rd April, 2020)

Booking.com fined HUF 2.5 billion for unfair commercial practices

Booking.com B.V, a Netherlands based company which renders online accommodation reservation service to its customers has been handed over a fine of HUF 2.5 billion for engaging in unfair commercial practices by the Hungarian Competition Authority (the 'Authority').

The proceedings against the booking.com was initiated as the Authority suspected use of pressure selling tactics by use of statements such as '32 customers are looking at the same hotel as you' or 'another person is considering booking a room at this accommodation'. The Authority during the investigation found out that such pressure selling tactics gave consumers the impression that the accommodation they were viewing was subject to high demand and limited availability. This practice exerted psychological pressure and disrupted the consumer decision-making process, as it subconsciously evoked emotions and fears in consumers that if they do not book the accommodation as soon as possible they may lose out on it.

The Authority also examined another practice of Booking.com wherein, it would place particular emphasis on the 'free cancellation option' of accommodation in its advertisement on television and internet. It was observed by the Authority that consumers, in fact, were only able to use this option for a limited period of time and paid a higher price for the same accommodation without the option of 'free cancellation'.

In addition to the imposition of a fine, the Authority also prohibited Booking.com from committing further infringements, by setting a deadline to cease the infringing practices.

The decision of the Authority is in line with the action of the European Commission and the EU's national consumer protection authorities (CPCs), as a result of which, in December last year, Booking.com undertook to modify its commercial behaviour in number of ways to comply with EU rules.

(Press Release 28th April 2020)

CADE to probe healthcare companies for increasing prices of medical-pharmaceutical products

On 18th March, 2020, the Administrative Council for Economic Defence (CADE) initiated proceedings for an administrative investigation of the health care companies engaged in manufacturing of medical-pharmaceutical products. The decision was taken due to the high demand for these products in view of the need for emergency care caused by an increase in COVID-19 cases in Brazil.

The CADE in its order, initiating investigation, stated that it was necessary to investigate the health companies to assess whether or not these companies were increasing prices and profits of medical-pharmaceutical products arbitrarily and abusively. The CADE further stated that it was important to ensure that such abuses, if proved, were penalised in accordance with law.

As part of investigation, the CADE will now issue official letters, requesting the companies who are engaged in the healthcare sector such as hospitals, laboratories, pharmacies, suppliers and manufacturers of drugs and equipments such as surgical masks, PPE and hand sanitizers, to submit their sales invoices pertaining to these products.

(Press Release 5th May, 2020)

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



4th Floor, Sishan House,
119, ShahpurJat,
New Delhi – 110049

India

+91-11-41081137

+91-11-49053075

www.kkslawoffices.com

globalhq@kkslawoffices.com

operations@kkslawoffices.com

legal@kkslawoffices.com