



# State of Antitrust

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- The Competition Bureau calls-out for information on potentially anti-competitive conduct in the digital economy.

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- The Supreme Court of India upholds COMPAT Order directing investigation against Uber.

AND MORE...

## **CCI clears acquisition of 70% shareholding in Saudi Basic Industries Corporation by Saudi Arabian Oil Company**

On 27.09.2019, the Competition Commission of India ('Commission'/'CCI') approved the combination involving Saudi Basic Industries Corporation (SABIC) and Saudi Arabian Oil Company (Saudi Aramco) for acquisition of 70% of the shareholding of SABIC by Saudi Aramco.

Saudi Aramco is primarily engaged in the exploration, production and marketing of crude oil and natural gas. In India, Saudi Aramco is mainly active in the supply of crude oil, liquefied petroleum gas, base oil and petrochemical products.

SABIC is primarily active in the production and sale of commodity chemicals (including petrochemicals), intermediates, polymers, fertilizers and to some extent metals. In India, SABIC is mainly active in the supply of agri-nutrients and petrochemical products.

This combination will allow Saudi Aramco to exercise complete control over SABIC. *(Press Release 27.09.2019)*

## **Higher Regional Court at Düsseldorf suspends the order of the Federal Cartel Office that restricted Facebook to collect and merge data in Germany**

The Higher Regional Court at Dusseldorf has suspended the order passed by the Federal Cartel Office (FCO) on 06/02.2019. The order of the FCO prohibited Facebook to collect and merge data of the users from different sources. Facebook was given a deadline of four months to present an implementation road map for the adjustments. Facebook appealed against the decision of FCO to the Higher Regional Court and requested a stay on the operation of the order.

The Higher Regional Court, presided over by Prof. Dr. Jürgen Kühnen, had serious doubts about the legality of the order of the FCO on the basis of a purely summary legal examination. The Court was of the opinion that even if the collection and processing of data by Facebook breached data protection rules, that might not necessarily be infringement of competition law at the same time. As a result of the temporary injunction, Facebook does not have to implement the decision of the FCO in Germany.

*(Press release 26.08.2019)*

## **Australian Competition & Consumer Commission takes action against Blue Scope for alleged cartel conduct**

The Australian Competition & Consumer Commission ('ACCC') has instituted civil proceedings against Blue Scope and its former General Manager - sales and marketing, Jasson Ellis for alleged cartel conduct in relation to supply of flat steel product. Flat steel products are an essential material in a number of sectors, such as construction, building, manufacturing, automotive and transport industries and BlueScope is the major manufacturer of flat steel products in Australia.

The ACCC alleged that, between September 2013 and June 2014, BlueScope and Ellis attempted to induce various steel distributors in Australia and overseas manufacturers to enter agreements containing a price fixing provision. ACCC is now seeking declarations, pecuniary penalties and costs against Blue Scope and Ellis.

*(Press Release 30.08.2019)*

## **The Portuguese Competition Authority imposes fines 225 million euros on 14 banks**

The Portuguese Competition Authority ('Aitoridade da Concorrenca'/'AdC') fined a total of 225 million Euros on 14 banks namely, BBVA, BIC, BPN, BCP, BES, BANIF, Barclays, CGD, Caixa de Credito Agricola, Montepio, Santander, Deutsche Bank and UCI for exchanging sensitive commercial data, during a period of more than ten years between 2002 to 2013. The AdC was informed about the sharing of commercially sensitive information between the banks, when one of the banks filed a leniency application. The exchange of sensitive data between the banks related to credit products, provided by the banks, in retail banking namely mortgages, consumer and small and medium enterprises credit products. The AdC stated that the act of sharing sensitive competitive information is an anti-competitive practice, as it allows firms to know the market strategies of their competitors and anticipate their moves, which is strictly prohibited by Article 9(1) of Law 19/2012, of May 8 (the Competition Law) and by Article 101(1) of the Treaty on the Functioning of the European Union. During the course of proceedings, the AdC conducted dawn raids in 25 premises of the 15 banks that participated in the cartel. In May 2015, the AdC issued a statement of objections, giving the banks involved the opportunity to exercise their rights of defense, after which oral hearings were conducted, as well as complementary evidence gathering, following requests of the accused. The amounts of fines imposed by the ADC, was determined after taking into account the seriousness of the act, duration of participation in the illegal activity, the way the market got affected because of the act.

*(Press Release 09.09.2019)*



## **Competition and Market Authority provisionally finds 2 drug firms violating competition law by exchanging sensitive information to keep prices up**

The Competition and Market Authority ('CMA') carried out an investigation into drug manufacturer viz. King Pharmaceuticals, Alisa Healthcare Research Ltd. and Lexon (UK) Ltd and provisionally found that these three drugs suppliers had exchanged commercially sensitive information such as prices, volumes and entry plans to keep up the price of Nortriptyline.

Nortriptyline is a NHS prescribed drug, which is taken by thousands of patients every month to get relieved from the symptoms of depression.

King Pharmaceuticals and Alisa Healthcare Research admitted that their conduct violated the provisions of the competition law whereas, Lexon UK Ltd. denied involvement in the suspected infringement.

Accordingly, CMA's investigation into Lexon is still ongoing.

*(Press Release on 20.9.2019)*

## **Australian Competition and Consumer Commission has strengthened its Cartel Immunity and Cooperation Policy which will come into effect on 1.10.2019**

The Australian Competition and Consumer Commission ('ACCC') has revised and strengthened its Cartel Immunity and Cooperation Policy to ensure more transparency.

The policy will continue to cover cartel conduct such as price-fixing, bid rigging and customer allocation but will not cover anti-competitive concerted practices.

The immunity policy will also offer a platform, to the first party, who reports a cartel and will avoid potential jail time and substantial fines.

As per the revised policy, applicants seeking immunity will hereafter be asked to enter the immunity process, which will clearly set out the steps required for conditional civil and criminal immunity under the policy.

Apart from the policy, the ACCC has also launched an anonymous online portal which encrypts the information and removes the person's IP address so that their identity is anonymous to the ACCC. This portal will also ensure that whistleblowers can also obtain a password to log back in and communicate anonymously with ACCC investigators.

*(Press Release 06.09.2019)*

## **Department of Justice files a civil antitrust lawsuit to block Novelis's Acquisition of Aleris**

To preserve competition in the North American Market for rolled aluminum sheet for automotive applications commonly referred as aluminum auto body sheet, the Department of Justice has filed a civil antitrust lawsuit to block Novelis Inc.'s proposed acquisition of Aleris Corporation.

As per the Department of Justice, this transaction will lead to a combination of two, out of four, North American producers of aluminum auto body sheet. Automakers are also greatly dependant on these two market players as their end products makes cars lighter, more fuel-efficient, safer and more durable. The loss of a competing supplier of aluminum body would ultimately harm the American car buyers.

Moreover, Aleris is an aggressive competitor whose expansion in the North American market would have an immediate effect on pricing in North America.

The Antitrust Division has taken note of the matter and referred it to arbitration. The arbitration would resolve the issue of product market definition. The arbitration would take place pursuant to the Administrative Dispute Resolution Act of 1996 and the Antitrust Division's implementing regulations. This will be the first time Antitrust Division will be using arbitration authority to resolve a matter.

*(Press release on 04.09.2019)*



## **Heard at the BAR**

*Legal news from India and the world*

## **The European Commission fines Coroos and Groupe 31.6 million Euros for taking part in canned vegetable cartel**

The European Commission ('EC') fined Coroos and Groupe CECAB a total of 31.6 million Euros for taking part in canned vegetables cartel. The investigation initiated after one of the cartel members namely Bonduelle filed a leniency application.

The EC found that companies viz. Bonduelle, Coroos and Groupe CECAB took part in cartel for the supply of canned vegetables to retailers or food service companies in the European Economic Area for more than 13 years. Instead of competing with each other, the cartel members agreed to divide the market and fixed prices of canned vegetables across Europe.

The primary aim of the cartel members was to strengthen their position in the market, maintain and increase the selling price, reduce uncertainty regarding their future commercial conduct and formulate marketing and trading conditions to their advantage. To achieve this aim, the cartel members agreed on prices, market shares and volume quotas, allocated customers and markets, coordinated their replies to tenders, and exchanged sensitive information.

The existence of cartel was revealed by Bonduelle, therefore it avoided a fine of 250 million Euros.

*(Press Release on 27.09.2019)*

## The Supreme Court of India upholds COMPAT order directing investigation against Uber

The Hon'ble Supreme Court of India ('SC') dismissed an appeal filed by Uber India Systems Pvt. Ltd. ('Uber') against an order of the erstwhile Competition Appellate Tribunal ('COMPAT') wherein, the COMPAT ordered an investigation into the allegations of abuse of dominant position against Uber in the region of NCR. While passing the order, the SC observed that it would be very difficult to say, after looking at the facts, that there is no *prima facie* case under Section 26(1) on infringement of Section 4 of the Competition Act, 2002 against Uber.

The information was filed by Meru Travel Solutions Pvt. Ltd. ('Meru') alleging that Uber was indulging in predatory pricing by offering huge discounts, in addition to the already reduced tariffs to customers and unreasonable high incentives to drivers to keep them attached to its network. The Commission observed that there existed stiff competition, at least between Ola and Uber and that Uber was not holding a dominant position in the relevant market and, hence, closed the case.

In the appeal before, the COMPAT, wherein it observed that the allegations made by the informant should be seen in the context of the overall picture as it exists in the relevant market in terms of status of funding, global developments, statements made by leaders in the business, the fact that aggregator based radio taxi service is essentially a function of network expansion and there was adequate indication from the respondent that network expansion was one of the primary purpose of its business operation.

The COMPAT further observed that it could not be said definitively that there was an abuse inherent in the business practices adopted by operator such as Uber but the size of discounts and incentives show that there are either phenomenal efficiency improvements which are replacing existing business models with the new business models or there could be an anti-competitive stance to it. The COMPAT, therefore, directed the DG to conduct an investigation into the allegations contained in the information filed by the Meru and submit report to the Commission as provided under the Act.

Uber filed an appeal before the SC against the order of the COMPAT. The SC observed that there was no need to interfere with the investigation as it would be very difficult to say that there was no *prima facie* case. Reliance was placed on the statement in the information, wherein, it was stated that Uber was losing Rs.204 per trip in respect of the every trip made by the cars of the fleet owners, which did not make any economic sense other than pointing to Uber's intent to eliminate competition in the market. The SC further observed that if a loss is made for each trip made, Explanation (a) (ii) of Section 4 i.e. "*affect its competitors or consumers or the relevant market in its favour*" would *prima facie* be attracted inasmuch as this would certainly affect the appellant's competitors or the relevant market in Appellant's favour.

On the basis of the aforementioned observations, the SC dismissed Uber appeals stating that there was no need for it to interfere with the order made by the COMPAT.

(Civil Appeal No. 641 of 2017, 3 September, 2019)

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