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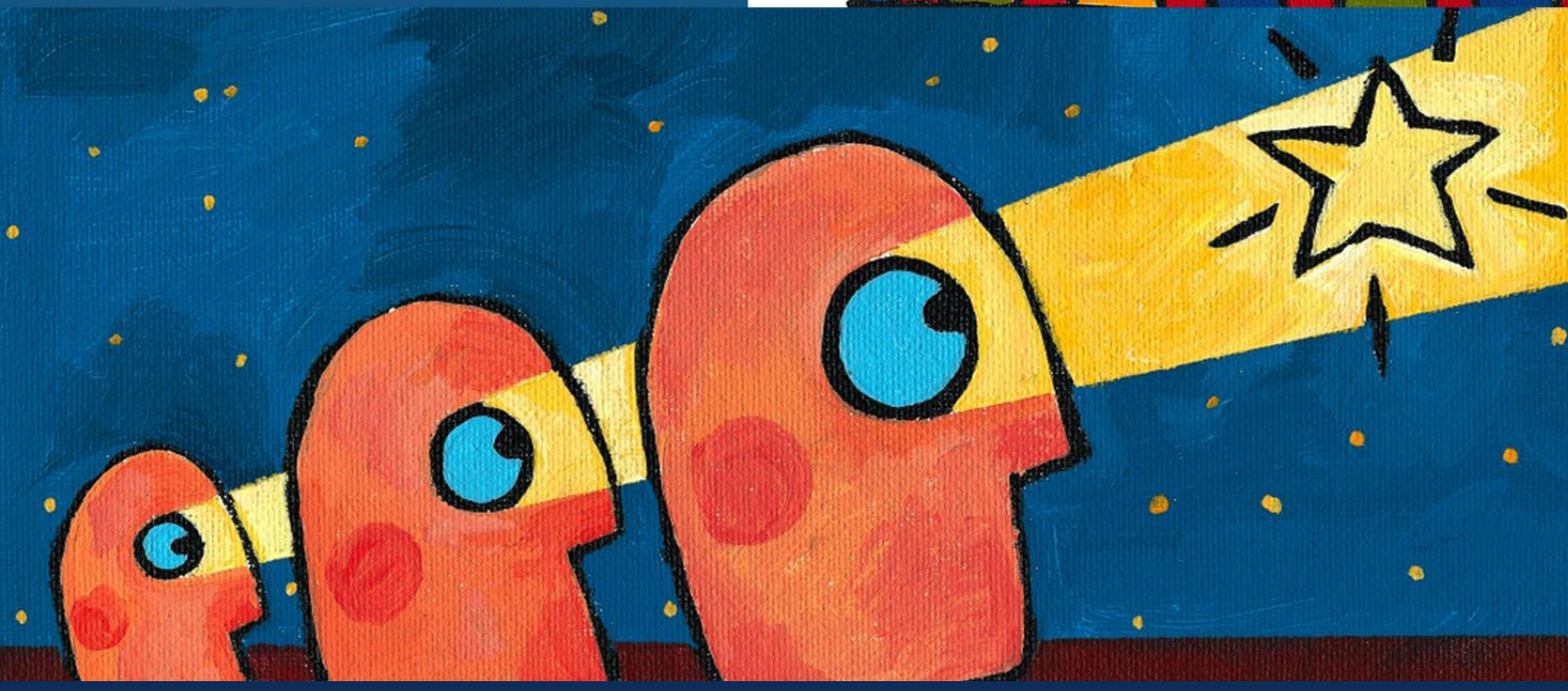

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CCI orders investigation against IRCTC for allegedly abusing its dominant position

The Competition Commission of India ('Commission' or 'CCI') ordered an investigation against Ministry of Railways and Indian Railway Catering and Tourism Corporation Ltd ('IRCTC'), collectively referred to as OPs, for an alleged abuse of dominant position by way of charging higher price than the actual cost of the railway ticket from ticket buyers.

The investigation was ordered on the basis of Information alleging that the OPs imposed unfair price in purchase of railway tickets by indulging in a practice of rounding off the actual base fare to the nearest higher multiple of Rs.5 to arrive at the total base fare. The Informants' delineated the 'relevant market' as '*e-payment service for online rail ticket booking in India*' and submitted that the OPs are in dominant position in the 'relevant market' due to statutory and regulatory framework. Being the only players in the market, the consumers have no choice but to agree to their arbitrary, unreasonable and unfair terms and conditions. Further, it was stated that there was no need to round off the actual base fare to the next multiple of Rs.5 as the e-portal allows consumers to even transfer a paisa electronically from their bank accounts. It was also contended by the Informants that the OPs rounded off actual base fares for each e-ticket separately even when more than one tickets were booked from the same account and till date the OPs have earned around Rs. 18 crores by rounding off of actual base fares, at the cost of consumers.

The OPs, in their response to the allegations, said that fixation of rates/fare for carriage of passengers was prescribed under Section 30 of the Railways Act, 1989. Accordingly, the OPs on the basis of the budget announcements, revised the fare structure for carriage of passengers, with instructions to round off fares to the next higher multiple of Rs.5 in respect of all classes except second class of ordinary passengers (suburban). It has also been averred by the OPs that in taking and giving change amount, the transaction time for issue of ticket increases. Therefore, it was decided by the OPs to round off the fares in order to reduce transaction time and serve the passengers expeditiously by consuming less time, thereby serving more passengers in a given time.

Before forming the prima facie opinion, the Commission delineated the 'relevant market' and observed that with respect to sale of railway tickets, there are two ways by which consumer can book tickets i.e. online and from the counter and both are separate markets in itself. The Commission noted that irrespective of whether consumer buys ticket through online or from the counter, OPs are the only service provider in both the markets and as the condition of competition are same across India therefore the relevant market was held as '*market for sale of tickets by railways in India*'.

With respect to dominant position of OPs, the Commission relied on its earlier decision in Case Nos: 100 of 2013, 49 of 2014 and 89 of 2014 Sharad Kumar Jhunjhunwala Vs. UOI, Ismail Zabiulla Vs UOI and Yaseen Bala Vs. UOI respectively, wherein the OPs were held to be a 'group' for the purposes of the Act and in dominant position in the market of transportation of passengers through railways across India.

With regard to submission by the OPs, the Commission did not find their justification convincing and said '*it appears that the Opposite Parties are rounding off the actual base fares for the online bookings without any plausible justification for the same*'

Therefore on the basis of prima facie evidence of contravention of section 4, the CCI ordered the Director General, to conduct an investigation in this matter. ***(Case No. 30 of 2018)***

Supreme Court stays Rs 420 crores fine on Hyundai

A two judge bench comprising of Justices AM Khanwilkar and Deepak Gupta stayed the order of Competition Commission of India ('CCI') imposing Rs 420 crores penalty on India's second largest car maker i.e. Hyundai, for indulging in anti-competitive practices, including lack of standardisation of spare parts and not allowing original equipment suppliers (OESs) to sell spare parts in the open market.

The National Company Law Appellate Tribunal ('NCLAT') last month rejected the Hyundai's plea to stay July 2015 order of the CCI that imposed a penalty of 420 crores for violating sections 3(4) and 4 of the Competition Act, 2002 (Act). The amount of penalty was based on Hyundai's total turnover. The CCI also issued several directions to be complied with by Hyundai, including standardisation of spare parts and allowing original equipment suppliers (OESs) to sell spare parts in the open market without any restrictions. The NCLAT asked Hyundai to deposit 10% of the penalty, based on its total turnover, and also to comply with the regulator's directions.

The defence argument of Hyundai was that the CCI penalty was based on its total turnover as opposed to 'relevant turnover' , as held by the apex court earlier in other similar cases, and was 54.54 times the penalty which would have been imposed on it had the penalty been based on its 'relevant turnover'. The Supreme Court, in other appeals by three original equipment manufacturers OEMs- Ford, Nissan and Toyota- on the same issue had stayed similar penalties imposed by CCI. Apart from this, the CCI had incorrectly considered financial years for determining the penalty as compared to other 14 original equipment manufacturers (OEMs) without providing any rationale for the same.

The Hyundai further made a claim that directions of CCI to put into a place a system for ensuring that independent repairers have access to spare parts, technical manual and diagnostic tools and training for repairers/dealers, and standardisation of spare parts are disproportionate to the alleged contravention and no guidance was supplied for the compliance of these directions. **(Case no. 10979/2018, order dated 16.11.2018)**

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Heard at the BAR

Legal news from India and the world

EC to carry in-depth investigation into new joint venture proposed by steel suppliers Tata Steel and ThyssenKrupp

In response to the notification dated 25th September, 2018, given by Tata Steel and ThyssenKrupp in respect of combination of their European carbon steel and electrical steel businesses through a joint venture ('JV'), the European Commission ('EC') has opened an in-depth investigation into the joint venture. The EC is concerned that transaction will reduce the choice of suppliers and would result in higher prices to the customers, who are European companies and small and mid-size enterprises, which compete, either with imported products in the European Economic Area ('EEA') or export their products outside Europe.

Tata steel and ThyssenKrupp are major integrated producers of flat carbon steel and electrical steel, based in EEA, particularly in Germany, the Netherlands and the UK.

The preliminary competition concern is in respect of carbon steel and electrical steel products viz. steel for automotive applications, metallic coated steel for packaging and grain oriented electrical steel.

Tata Steel and ThyssenKrupp have decided not to submit commitments during initial investigation to address preliminary concerns addressed by the EC.

With 90 working days in hand, the EC will investigate the impact of the planned combination of Tata Steel's and ThyssenKrupp's steel businesses that may reduce competition in the supply of various high-end steels.

In addition to this, there are six ongoing Phase II merger investigations: the acquisition of Gemalto by Thales, the acquisition of Alstom by Siemens, the acquisition of Solvay's nylon business by BASF, the acquisition of Tele 2 NL by T-Mobile NL, the acquisition of MKM by KME, and lastly, the acquisition of Aurubis Rolled Products by Schwermetall.

(Press Release 30.10.2018)

EC opens investigation against airline ticket distribution services providers

European Commission ('EC') has opened a formal investigation against Amadeus, a company based in Spain, and Sabre, a company based in the US, to assess whether certain terms in their agreements with airlines and travel agents are restrictive of competition and in breach of EU antitrust rules.

Amadeus and Sabre are leading worldwide suppliers of Computerised Reservation Systems, also known as Global Distribution Systems which help in aggregating information about flight schedules, seat availability and tickets prices from multiple airlines. The services provided by Amadeus and Sabre, enable travel agents and travel management companies to compare airline services, reserve and issue tickets on behalf of travelers.

The Commission is concerned that certain terms in Amadeus' and Sabre's agreements may restrict the ability of airlines and travel agents to use alternative suppliers of ticket distribution services. This might also make it harder for new suppliers of ticket distribution services to enter the market and also may result in increase in distribution costs for airlines which are ultimately passed on to the consumers in the form of higher ticket prices.

Such terms are under investigation because as it may breach EU competition rules which prohibit agreements within the EU's Single Market that prevent, restrict or distort competition.

Therefore, the EC will now carry out its in-depth investigation in the matter.

(Press Release 23.11.2018)

DOJ exposes a decade long bid-rigging conspiracy by South Korean companies

SK Energy Co. Ltd., GS Caltex Corporation, and Hanjin Transportation Co. Ltd, all based in South Korea have been exposed by the Department of Justice ('DOJ') US, for being involved in a decade-long bid rigging and price fixing conspiracy for supply of fuels to Unites States Army, Navy, Marine Corps and Air Force bases in South Korea.

The conspiracy began at least in or around March 2005 and continued till 2016. South Korean petroleum and refinery companies and their agents participated in combination and conspiracy to suppress and eliminate competition during the bidding process for fuel supply contracts.

All three companies agreed to plead guilty to criminal charges for their involvement in a conspiracy and to pay a total of approximately $82 million in criminal fines.

Under section 4A of the Clayton Act, the United States (U.S) can obtain treble damages when it has been injured by an antitrust violation.Therefore, a separate civil antitrust complaint with proposed settlement agreement had been filed before U.S district Court.

The proposed settlement provides that SK Energy pays $90,384,872, GS Caltex pays $57,500,000, and Hanjin pays $ 6,182,000 to U.S to resolve the civil antitrust violations.

The above payments will also resolve civil claims that the U.S has under the False Claims Act against the three companies for making false statements to the U.S government in connection with their agreement not to compete.

(Press Release 30.11.2018)

CCI initiated an investigation against Intel Corporation for allegedly abusing its dominant position

The CCI has ordered an investigation under section 26(1) against Intel Corporation ('Intel'/'OP') for the abuse of dominant position, on the basis of the Information submitted by a Bangalore based domestic producer of servers. Intel is a multi-national corporation and technology company engaged in the designing, manufacturing and distribution of a wide range of information technology components, peripherals, computer systems, etc.

It was alleged by the Informant that OP was preventing the Informant from manufacturing its own servers. A server is a type of computer, designed to process requests and deliver data to another computer over the internet or a local network. The processors manufactured by the Intel are treated and accepted as industry standard by the consumers and hence the 'server board', a component of the servers, has to be compatible with the processors of Intel.

The Informant alleged that the OP was denying access to all files/ documents/ information necessary for enabling the Informant to design/ develop and manufacture its own Server-Boards which are compatible with the Micro-Processors manufactured by the OP. This denial by the OP, who holds 80% of the market, amounted to abuse of dominant position in contravention of Section 4 of the Competition Act, 2002. It was further alleged by the Informant that Intel is giving access to such information/reference files to other server manufacturers in market.

The OP in its response to the allegation stated that it provided all the relevant files required to manufacture server board and the relevant geographic market should be global and not India. It was also advanced by the Intel that the Informant lacked necessary manpower, technical expertise and financial backing to develop server and Intel had no incentive to deny access to the reference file to anyone.

After analysing the relevant market and communication between by the Informant and the OP, the Commission was of the opinion that there existed a prima facie case. The Commission held '*that the OP being in a dominant position in the market for "Processors for Servers in India" has, by refusing to provide access in a non-discriminatory manner to the complete set of files/ information necessary for the Informant to design its own Server-Boards which are compatible with the Micro-Processor manufactured by the OP, prima facie, denied market access to the Informant in contravention of Section 4 (2) (c) of the Act*'.

Therefore, the Commission directed the DG, to cause an investigation into the matter and to submit a report. ***(Case No.16 of 2018)***

INOAC Corporation pleads guilty for bid-rigging, pays $ 1.3 million as fine

On 19th October 2018, INOAC Corporation, a Japanese car parts manufacturer, after pleading guilty before Ontario Superior Court of Justice, was ordered to pay $1.3 million as fine, for its role in an International bid-rigging conspiracy.

The Competition Bureau of Canada ('Bureau'), in its investigation found that INOAC Corporation had entered into illegal agreements with a competing Japanese parts manufacturer and conspired to determine certain calls for bids issued by Toyota in 2004 for the supply of plastic interior car parts used in Toyota Corollas manufactured and sold in Canada between 2008 and 2014.

Guilty plea by INOAC has concluded the Bureau's investigation in series of international bid-rigging conspiracies among car parts suppliers, which began in 2009 after the Bureau learned about illegal activity in the auto parts industry through its Immunity Program. The investigation led 13 guilty pleas and fines totalling more than $86 million, including three of the largest bid-rigging fines ever imposed by the courts in Canada i.e. $30 million on Yazaki Corporation, $13.4 million on Mitsubishi Electric and $13 million on Showa Corporation respectively. ***(Press Release 19.10.2010)***

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